

***United States Court of Appeals
for the Second Circuit***



APPENDIX

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

United States v. Merchant Diamond
Group, Inc.,
No. 77-1278

3 * * * * *

Vol. III

4 THE UNITED STATES

5 -v-

6 THE MERCHANT DIAMOND GROUP, INC.,

7 Defendant.

8 * * * * *

9 Proceedings held before the HON. JOHN T. CURTIN, United
10 States District Judge, in Part I, United States Court House,
11 Buffalo, New York. resuming on June 20, 1977.

12
13 APPEARANCES:

RICHARD J. ARCARA, United States Attorney,
by L. GEORGE PARRY, Attorney, United
States Department of Justice.

15 SAPERSTON, DAY & RADLER, Attorneys for
16 the Defendant: WARREN S. RADLER, Esq.,
and BRIAN P. FITZGERALD, Esq., of
17 Counsel.

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H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PAGINATION AS IN ORIGINAL COPY

1 PROCEEDINGS: June 20, 1977, 3:20 p.m.

2 APPEARANCES: As before noted.

3

4 THE COURT:

5 Mr. Radler, I appreciate your
6 coming over on rather short notice. I
7 realize this changed scheduling of the
8 situation has been bad but it seems to
9 me that I do not know what the problems
10 that Mr. Parry had, but the witness is
11 here from Ottawa and in the long run it
12 seemed to me to be to your interest to
13 get this resolved as quickly as we could.
14 Certainly if you need time for rebuttal
or anything of that nature --

15 MR. RADLER:

16 My only concern was that I asked
17 Mr. Powell to return tomorrow in the
18 expectation they would bring in expert
19 testimony but I do understand the
20 problem and we will do the best we can.
21 If we need to, we will bring Mr. Powell
in for rebuttal.

22 THE COURT:

All right.

23 MR. PARRY:

May I proceed, your Honor?

24 THE COURT:

Yes.

25 MR. PARRY:

The Government calls Saul Froömkín.

1 S A U L M. F R O O M K I N (Apartment 1703, 1081 Ambleside
2 Drive, Ottawa, Ontario, Canada), a witness called by and in
3 behalf of the Government, having been first duly sworn, was
4 examined and testified as follows:

5

6 DIRECT EXAMINATION BY MR. PARRY:

7 Q. You may sit down, Mr. Froomkin.

8 THE COURT: You may sit down.

9 THE WITNESS: Thank you, your Honor.

10

11 BY MR. PARRY:

12 Q. Mr. Froomkin, what is your occupation, sir?

13 A. I am the Director of Criminal Law for the Canadian
14 Department of Justice.

15 Q. What are your duties as Director of Criminal Law?

16 A. As the Director of Criminal Law I have the responsibility
17 of the overseeing the day to day problems of all the
18 federal prosecutions across the country. In addition
19 I am responsible for all extradition matters and advising
20 crime departments and the Government on legal matters
21 to do with criminal law and I have input into policy,
22 legislative policy as well.

23 Q. Now, you are an attorney?

24 A. I am, sir, yes.

25 Q. And what formal training have you had in the law?

1 A. I graduated from the Manitoba Law School in 1960 with
2 a Bachelor of Laws and in 1965 I took a Masters Degree
3 in Law in Evidence at the University of Manitoba.

4 Q. And after your graduation from the University of
5 Manitoba, how were you employed?

6 A. I qualified as a barrister and solicitor in 1961 and
7 was in private practice from 1961 until 1969. My private
8 practice consisted solely, - I was in partnership with
9 three other barristers, - I did criminal and civil
10 litigation during that period of time and then in August
11 of 1969 I joined the Canadian Department of Justice in
12 Ottawa as a Senior Advisory Counsel in the civil litiga-
13 tion side until January of 1976 when I became the
14 Director of Criminal Law for the Department of Justice.

15 Q. Now, in addition to the formal education that you have
16 told us about, do you have any other degrees or titles
17 that have been conferred on you?

18 A. In 1976 I was appointed Queen Counsel by the Cabinet of
19 the Federal Government.

20 Q. Now, in regard to your position with the Federal Depart-
21 ment of Justice, can you tell us, please, whether or
22 not to your knowledge the Federal Department of Justice
23 is involved in any manner in the present investigation
24 and prosecution of the Merchant Diamond Group in Toronto?

25 A. Not to my knowledge, sir. This would be solely the

1 jurisdiction of the Attorney General of Ontario.

2 Q. Now, also in regard to your duties with the Department
3 of Justice, have you had an opportunity to become
4 familiar with a portion of the Canadian Criminal Code
5 entitled the "Invasion of Privacy Act"?

6 A. Yes, sir. I must say I am concerned with it almost on a
7 daily basis and in addition I have had some considerable
8 input into proposed amendments to that legislation from
9 time to time.

10 Q. Okay. Now, you say you are concerned with it on a daily
11 basis. What form does that take?

12 A. Well, we have ten regional offices across Canada which
13 are concerned amongst other things with prosecution of
14 federal offenses in respect of which authorizations are
15 often obtained. Perhaps I should rephrase that and
16 rather than say "often", say on occasion obtained, and
17 in addition we have about four hundred odd agents
18 across the country who do ad hoc work as well. Many of
19 them are designated to apply for authorizations and if
20 any of the cases where problems arise that cannot be
21 dealt with at the regional level, head office is
22 contacted, and namely me and my staff and I try to solve
23 the problems where I can and interpret the legislation
24 where it is necessary.

25 Q. These agents that you referred to, are they attorneys?

1 A. Yes, they are.

2 Q. Now, showing you what has been marked previously as
3 Defendant's Exhibit Number 1 which is identified as
4 Martins Annual Criminal Code of Canada, can you locate
5 in there the Invasion of Privacy Act?

6 THE COURT: Do you consider this to be an
7 authoritative work?

8 THE WITNESS: Yes, your Honor. It is our Bible.
9 It is published, - well, the editor is
10 Cartwright. There is an edition comes
11 out each year. This is the latest '76
12 edition. I have my own every-day copy
13 which is identical with me. I am
14 familiar with the text. I consider it
15 to be authoritative and the wiretap
16 provisions, I think, are page, - they
17 come at Page 107, Part 4.1 under the
18 "Invasion of Privacy" heading, starting
19 at Section 173.1.
20

21 BY MR. PARRY:

22 Q. Now, earlier today, Mr. Froomkin, I posed to you a
23 hypothetical and I would like to repeat the hypothetical
24 for you now and for purposes of the record. The hypo-
25 thetical situation that I propose to you assumes the

1 following: It assumes first that there is an investiga-
2 tion being conducted by the Royal Canadian Mounted
3 Police of a corporation and its employees in Canada.
4 The hypothetical further assumes that this corporation
5 also has a related corporate entity with employees in
6 the United States. The investigation conducted by the
7 RCMP utilizes or has utilized court authorized wiretaps
8 of the subjects of the investigation. The hypothetical
9 further assumes that in fact interceptions of communica-
10 tions were made pursuant to these authorizations by the
11 RCMP; that at some point in the course of the investiga-
12 tion a determination was made by the RCMP that to
13 further its investigation that searches should be
14 conducted at locations in the United States. The hypo-
15 thetical further assumes that in order to provide the
16 United States authorities with the necessary probable
17 cause to conduct these searches, the RCMP would disclose
18 certain of these tapes to United States investigators
19 and that in fact on that basis such disclosure was made.
20 The hypothetical further assumes that United States
21 investigators utilized this information to obtain
22 probable cause for search warrants which were then
23 obtained in this country; that searches were conducted;
24 that seizures were made in this country and that the
25 evidence so seized was made available to the RCMP for

1 its examination and analysis. Now, based on the facts
2 or the hypothetical situation as I have described it
3 to you, can you tell us whether or not in your opinion
4 that the, - whether or not in your opinion the actions
5 of the RCMP were lawful or unlawful under Canadian Law?

6 MR. RADLER: If the Court please, before the
7 witness answers, I object. Number one,
8 there has been absolutely no factual
9 basis for the hypothetical. I respect-
10 fully submit that you just can't take
11 a hypothetical out of the air.

12 THE COURT: I will listen to that later. As I
13 was listening, I was wondering about
14 some of the assumptions being made, but
15 I will permit the answer.

16 MR. RADLER: All right. I would like to state
17 further grounds if I may for the objection,
18 your Honor. Secondarily, I don't think
19 that's the point of this proceeding
20 because we are now hearing that the
21 alleged disclosure or the disclosure was
22 made for the purpose of assisting a
23 Canadian --

24 THE COURT: I agree. I heard nothing in the
25 record before about that.

1 MR. RADLER:

Okay, assisting the Canadian
authorities. Instead what has happened
here is they have seized American
property of an American citizen.

5 THE COURT:

We will do this; I will permit the
answer and we can take up cross examina-
tion.

8 MR. RADLER:

All right.

10 BY MR. PARRY:

11 Q. Now, going back to the question, Mr. Froomkin, given the
12 elements of the hypothetical as it has been stated,
13 can you tell us whether or not the actions of the RCMP
14 as described are lawful or unlawful under Canadian Law?

15 A. In my opinion, sir, clearly lawful.

16 Q. And for that matter, are the actions of the U. S.
17 investigators as described in the hypothetical lawful
18 or unlawful under Canadian Law?

19 MR. RADLER:

Your Honor, I object to this
witness' interpretation of what may be
lawful with respect to United States
investigators.

24 BY MR. PARRY:

25 Q. Under Canadian Law.

1 MR. RADLER: I don't think the U. S. investigators'
2 lawfulness is the issue here.

3 THE COURT: I will overrule the objection.
4

5 BY MR. PARRY:

6 Q. You may answer.

7 A. Based upon that hypotheses, the actions of the American
8 investigators in Canada would not be contrary to
9 Canadian Law, vis-a-vis the privacy legislation.

10 Q. Now, in regard to the answers that you have given, do
11 you have a particular provision of Canadian Law in mind
12 upon which you base your conclusion?

13 A. Yes, sir. That set of circumstances is in my opinion
14 clearly covered by Section 178.20, Sub.2(b). Subsection 1
15 is the offense provision for unlawful disclosure and
16 Subsection 2 are the exceptions setting out the
17 circumstances under which disclosure may be made, and
18 2(b) says such disclosure may be made, and I am quoting
19 now, "In the course of or for the purpose of any criminal
20 investigation if the private communication was lawfully
21 intercepted".

22 Q. Now, the language that you use there refers to a
23 criminal investigation, is that correct?

24 A. Yes.

25 Q. Okay. Now, would your conclusion be altered in any

1 manner if in addition to the disclosure being made in
2 the course of an investigation, an investigation in
3 Canada if as a concomitant of that disclosure that
4 disclosure should in some manner or means benefit an
5 investigation in this country.

6 MR. RAJLER:

If the Court please, the hypothetical
as I understand it was based upon a
disclosure made to assist a Canadian
investigation and nothing more. That's
the basis for the hypothetical. He is
now seeking to expand the hypothetical
which is based on no facts in the record
to something that may help a United
States investigator.

15 THE COURT:

I will consider your argument later.
I will overrule the objection.

17 THE WITNESS:

I take it the question is would my
opinion change if as a result of the
disclosure it might assist American
authorities. My answer is "No", that my
opinion wouldn't change so long as the
disclosure was made for the purpose of
or in the course of a criminal investiga-
tion in Canada.

1 BY MR. PARRY:

2 Q. Now, in regard to this particular section of law that
3 you have referred to and the problem that has been
4 posed, is this the first time that you have ever been
5 called upon to consider this particular problem?

6 A. No, sir. The opinion I have expressed is in fact the
7 official opinion of the Attorney General of Canada
8 which opinion was expressed in writing to the RCMP
9 over a year ago, April 13, 1976 in a different matter
10 where the same question arose and the Government of
11 Canada was asked for an opinion and myself and my
12 superior Mr. Philippe Londre, the Assistant Deputy
13 Attorney General of Canada, prepared such an opinion.
14 That opinion was sent in writing to the RCMP with a
15 suggestion that it be turned over to all of their
16 senior commanders, - I am sorry, senior officers in
17 the field, and we sent a copy of that opinion to all
18 our regional offices across the country and that opinion
19 is still in effect certainly with respect to the Federal
20 Department of Justice and the RCMP as far as I am
21 aware.

22 Q. Showing you what has been marked for identification as
23 Government's Exhibit Number 1, can you identify that
24 document, please?

25 A. Yes, sir. This is a photocopy of the opinion which I

1 made. It is a true copy of that opinion. I have had
2 eliminated in the reline the name of the individual
3 referred to. It was a person unconnected with these
4 proceedings and in respect of an investigation under the
5 Customs Act but this opinion dated April 13, 1976 and is
6 the official opinion of the Department of Justice and
7 the Attorney General of Canada. It was signed by my
8 immediate superior Mr. Louie Philippe Londre, the Assistant
9 Deputy Attorney General of Canada, and it is consistent
10 with my present opinion.

11 MR. PARRY: We will offer this.

12 MR. RADLER: May I have a moment since I have
13 not seen it before, if the Court please.
14 I am sorry, but it is three single-spaced--

15 THE COURT: Just hold that a minute. Do you
16 have anymore questions?

17 MR. PARRY: No, I don't, your Honor.

18 THE COURT: All right. Why don't we do this,
19 Mr. Radler; you will have a chance to
20 read it, study it and confer about it.
21 We will take a recess of maybe about
22 ten minutes.

23 MR. RADLER: Yes, fine.

24 MR. PARRY: Thank you, sir.

25 (Recess taken at 3:35 p.m.)

* * * *

1 PROCEEDINGS: After recess, 3:54 p.m.

2 APPEARANCES: As before noted.

3

4 S A U L M. F R O O M K I N, a witness called by and in
5 behalf of the Government, having been previously duly sworn,
6 resumed the witness stand and testified further as follows:

7

8 CROSS EXAMINATION BY MR. RADLER:

9 THE COURT: Do you want to continue, Mr. Radler?

10

11 BY MR. RADLER:

12 Q. Thank you, sir. Mr. Morton, so I understand --

13 A. Froomkin. Morton is my middle name.

14 Q. I am sorry. I didn't get your last name.

15 A. Froomkin, F-r-o-o-m-k-i-n.

16 Q. I am very sorry. Excuse me, sir. So I understand it
17 the Canadian Department of Justice has branches in some
18 of the major areas of Canada, do they not?

19 A. Yes, sir.

20 Q. For example, there is a branch in Toronto at the Dominion
21 Center, is that right?

22 A. Yes.

23 Q. Who is Mr. J. A. Issac?

24 A. Julius Issac is one of our prosecutors. He is now the
25 section head of the criminal section there.

1 Q. How about Mr. Shulten?

2 A. Shulten?

3 Q. Yes, R. R. Shulten, do you know him?

4 A. Not by name.

5 Q. All right, sir. Could you explain to me the relationship
6 between the Royal Canadian Mounted Police and the
7 Canadian Department of Justice?

8 A. Yes. The, - there are two relationships. First of all,
9 we are the prosecutors of any federal offenses with
10 which the RCMP are concerned. The other relationship
11 is we are the legal advisors to all government departments
12 including branches of the Government like the Solicitor
13 General Department and the RCMP.

14 Q. So that any disclosures of Canadian wiretap information
15 by the RCMP would be part of your jurisdiction and
16 concern, would it not be?

17 A. If we were consulted.

18 Q. Well, would the Royal Canadian Mounted Police in the
19 normal course of things consult the Canadian Department
20 of Justice prior to the release of any Canadian wiretap
21 information?

22 A. If they required a legal opinion, yes.

23 Q. So that if they were asked for an opinion it would be
24 an opinion directed to your department, is that right?

25 A. "Yes" and "No". It might be directed first to the, -

1 they have their own legal branch but primarily the legal
2 branch of the RCMP is concerned with preparation of
3 manuals and giving legal advice in certain limited
4 areas, but any major legal opinions are to be given by
5 the Department of Justice.

6 Q. If the question we are discussing in this courtroom were
7 to be submitted to anybody for legal opinion, it would
8 come to you?

9 A. That question, yes.

10 Q. All right, and any attendant ramifications of any
11 improper disclosure would also be your concern, would
12 it not?

13 A. It depends upon what you have reference to.

14 Q. Well, for example, the statute, the Canadian "Invasion
15 of Privacy Act" has civil penalties, doesn't it?

16 A. Yes.

17 Q. For improper disclosure?

18 A. Yes, sir.

19 Q. And provides for punitive damages against those people
20 authorizing improper disclosure, does it not?

21 A. Yes, it does.

22 Q. So you would be concerned, would you not, as an officer
23 of the Canadian Department of Justice with respect to
24 the propriety of disclosures by the Royal Canadian
25 Mounted Police to law enforcement agencies outside of

1 Canada?

2 A. Well, I am not sure of how you are using the word
3 "concern", sir. If you mean concerned in the sense of
4 an obligation, as I said to you, if we are asked for an
5 opinion we render it. Now, I can't say I stay up all
6 night worrying about what the RCMP are doing and not
7 doing.

8 Q. I am sure you don't, sir, but if they are doing something
9 wrong sanctioned by the Department of Justice, there are
10 appropriate civil and criminal penalties, aren't there,
11 under your statute?

12 A. They wouldn't be doing anything wrong sanctioned by the
13 Department of Justice. If it was sanctioned by the
14 Department of Justice, it would be right.

15 Q. Was this disclosure with respect to the wiretaps of the
16 Merchant Diamond Group sanctioned by the Department of
17 Justice?

18 A. I don't know other than to say that the policy as
19 enunciated in the exhibit which I think was marked
20 today as Exhibit Number 1 was given to the RCMP and
21 was presumably given, - hopefully given to all of their
22 senior officers and therefore they would already have
23 our opinion to cover the circumstances that have been
24 brought to my attention today so they wouldn't have to
25 come back to us for this same opinion.

1 Q. As I understand it, though, and I will show you the
2 exhibit in just a minute, it is your opinion that the
3 disclosure of Canadian wiretap information can be used
4 solely for the purpose of assisting an investigation
5 with respect to a crime committed in Canada, isn't
6 that right?

7 A. Yes, sir, as opposed to a mere exchange of criminal
8 intelligence.

9 Q. Let me give you the original of Exhibit 1 which is
10 your opinion or the opinion upon which you answer the
11 questions, right?

12 A. No, it is my opinion.

13 Q. It is your opinion?

14 A. Yes.

15 Q. And this opinion contained in Exhibit 1 has all of the
16 information necessary for you to render this testimony
17 in court, doesn't it? You base your opinion on this
18 letter of April 13th, 19 --

19 A. No, sir. The opinion expressed in Exhibit 1 is the
20 same opinion that I have expressed today.

21 Q. All right. Well, that's what I am saying, it has all
22 of the information that you would like --

23 THE COURT: Mr. Radler, can you wait, just a
24 minute?

25 MR. RADLER: Surely.

1 THE COURT: I am sorry. Go ahead, Mr. Radler.

2
3 BY MR. RADLER:

4 Q. It is your opinion as expressed in Exhibit 1, is it
5 not, that Section 178.20 of the Criminal Code does not
6 allow disclosure of the existence of a private
7 communication that has been intercepted nor its substance
8 to a foreign government except as indicated thereafter,
9 right?

10 A. Yes, sir.

11 Q. And then you say, and I direct your attention to the
12 third paragraph of this letter, quote, "It is quite
13 clear that our law does not permit interceptions for
14 the purpose of furthering investigation of crimes
15 entirely committed in a foreign country and which could
16 not be prosecuted in Canada", right?

17 A. Yes.

18 Q. And finally you go on to say this on Page 2, first full
19 paragraph, quote, "In other words, the disclosure of
20 the existence of a private communication or the substance
21 thereof to a foreign police agency or government cannot
22 be made for the purpose of assisting that foreign
23 agency or government in furthering an investigation of
24 its own but must be limited strictly to what is necessary
25 to permit the foreign agency or government to assist us

1 in completing the Canadian investigation," end of quote,
2 right?

3 A. Yes. You have left out, of course, Paragraph 4 which
4 leads into that, but yes.

5 Q. But that is the conclusion?

6 A. That is one of the conclusions, yes.

7 Q. Well, what I am saying, sir, is that the disclosure of
8 Canadian wiretap information to be lawful under your
9 own opinion must be solely for the purpose of furthering
10 a Canadian investigation and not for the purpose of
11 furthering a United States investigation, isn't that
12 correct?

13 A. Yes, sir. My opinion is that the --

14 Q. Is that correct, sir?

15 MR. PARRY: Well, may he be permitted to give
16 a full answer? This is silly.

17 THE COURT: He will not be limited to a "Yes"
18 or a "No".

19
20 BY MR. RADLER:

21 Q. All right.

22 A. Sir, my opinion as I have expressed is that if the
23 purpose of the disclosure is solely to further an
24 American investigation, that is unlawful, but if the
25 disclosure is for the purpose of or in the course of

1 the investigation of a crime in Canada and in addition
2 thereto happens to assist American authorities, that is
3 not unlawful so long as the original purpose is in the
4 course of a criminal investigation or for the purpose
5 of a criminal investigation in Canada.

6 Q. Well, the purpose of this disclosure was to assist the
7 United States Government in obtaining information for
8 violations of 18 USC, Sections 1341, 1343 and Section
9 371, wasn't it?

10 A. That is not my understanding, sir.

11 Q. Well, let's --

12 A. If you want me to answer the question I will finish it.

13 Q. It was not your understanding?

14 A. No. My understanding from the prosecutor of the case
15 in Canada and from the information I have obtained here
16 is that the sole purpose of the disclosure was to
17 further the Canadian investigation.

18 Q. That is your understanding?

19 A. That is my understanding.

20 Q. If the Court please, I show you in preparing for your
21 testimony today or discussing this matter with Mr. Parry
22 did he show you the affidavit of the United States
23 Postal Inspector?

24 A. He showed me an affidavit of a United States Postal
25 Inspector, yes.

333

1 Q. And I am referring now to an affidavit of Ronald L.
2 Snyder.

3 A. If I may glance at it for a moment.

4 Q. Certainly.

5 A. Yes, sir. That appears to be a copy of the same
6 affidavit I saw this afternoon.

7 Q. For the record, that is the affidavit of Ronald L.
8 Snyder subscribed on April 13, 1977 in support of the
9 application for a search warrant before this Court.
10 Now I show you the affidavit for a search warrant signed
11 by Ronald L. Snyder and it says, does it not, "And the
12 facts tending to establish the foregoing grounds", -
13 I am sorry, excuse me. Forgive me. It says, does it
14 not, "There is now being concealed certain property
15 which are evidence, fruits and instrumentalities of the
16 violations of 18 USC, Section 1341, Section 1343 and
17 Section 371 by Gerald Doren and others", does it not?

18 A. Sir, that is post facto. The affidavit says that before
19 this application was made the information was given to
20 the officers, - just a minute, sir, if I may.

21 Q. Certainly.

22 A. What you have interpreted this to mean is that the
23 affidavit is in support of an application for a search
24 warrant and that the information obtained from the
25 RCMP was for this purpose and that is clearly from what

1 I read not the case at all.

2 THE COURT: Mr. Radler, excuse me.

3 MR. RADLER: Surely.

4 THE COURT: All right. Do you want to go ahead,
5 Mr. Radler.

6
7 BY MR. RADLER:

8 Q Please don't misunderstand. I am not trying to argue
9 with you. I am only pointing out to you, sir, because
10 this is a hearing that you needn't concern yourself
11 with --

12 THE COURT: Mr. Froomkin, you should keep in
13 mind also that Mr. Parry will have the
14 opportunity to bring out any further
15 information so it may help if you
16 address yourself to Mr. Radler's
17 question in particular and answer the
18 question asked.

19 THE WITNESS: Thank you, your Honor.

20
21 BY MR. RADLER:

22 Q I am only saying, sir, that the affidavit for the
23 search warrant before you does not request that the
24 search warrant be issued to assist in the furtherance
25 of a Canadian investigation, does it, sir?

1 A. No, sir.

2 Q. And in fact on its face, and I recognize that you are
3 not a United States lawyer, -on its face, sir, it asks
4 that the search warrant be issued so that, - because
5 the materials sought to be seized are evidence and
6 fruits and instrumentalities of U.S. violations.

7 A. Yes, sir.

8 Q. And as I understand your testimony, you are saying that
9 if the purpose of the use of the Canadian wiretap
10 information is for prosecution of U.S. crimes, it would
11 be unlawful?

12 A. No, sir, that is not what I said.

13 Q. Well, you --

14 A. What I said was that the disclosure to be lawful must
15 be in the course of or for the purpose of a criminal
16 investigation in Canada, but if as a result of that
17 disclosure the American authorities have investigations
18 or prosecutions in the United States, there is nothing
19 wrong with that so long as the disclosure is not solely
20 for the purpose of an American investigation or charge.

21 Q. Well, Mr. Froomkin, there was no American investigation
22 or charge prior to the time the disclosure was made by
23 Corporal Kossatz to the U. S. Postal Inspector, was
24 there, sir?

25 A. No, there wasn't, and that's why it reinforces my view

1 that it was lawful because the disclosure could not have
2 been made for the purpose of a U. S. investigation if
3 there was none at the time. It was obviously for the
4 purposes of the Canadian investigation.

5 Q. Where does it say in the affidavit of Ronald, - please
6 let me finish, Mr. Froomkin. Where does it say in the
7 affidavit of Ronald Snyder or in the affidavit submitted
8 by Postal Inspector Snyder and signed by Judge Curtin
9 approving the search warrant that is for the purpose
10 of assisting a Canadian investigation?

11 A. It doesn't.

12 Q. It doesn't, does it; am I correct?

13 A. That's right.

14 Q. As a matter of fact, and you have gone through this
15 with Mr. Parry, the purpose of the disclosure here was
16 solely to obtain property in furtherance of a U. S.
17 investigation, wasn't it?

18 A. No, sir. I am advised that the information obtained was
19 very useful to the Canadian authorities and that's what
20 the whole purpose of the exercise was, to get evidence
21 suspected to be in the United States.

22 Q. Mr. Froomkin, you had all the taps in Canada, didn't
23 you?

24 A. I don't know, sir.

25 Q. I mean the wiretaps which are the basis of this affidavit

1 and search warrant were all Canadian wiretaps, weren't
2 they?

3 A. I don't know. I only do know that I am informed that
4 there were authorizations to intercept telephones in
5 Canada. I don't know if there were any in the States.
6 I don't know if there were any issued in the United
7 States or not. Certainly we would have no jurisdiction
8 to authorize wiretaps in the United States.

9 Q. As a matter of fact, do you know whether the wiretaps
10 that were made on Canadian telephones complied with the
11 U. S. wiretap statutes?

12 A. I have no idea, sir.

13 Q. You don't know that, do you?

14 A. No idea at all.

15 Q. Similarly do you know whether the interceptions made in
16 Canada, because of the phone setup in Toronto, were
17 intercepts between calls solely taking place within the
18 Continental United States?

19 A. I don't know, sir.

20 Q. You don't know that either?

21 A. No, sir.

22 Q. All you do know is that the interceptions were electronic
23 surveillances approved by a Canadian court, is that
24 correct?

25 A. Yes, I know that the, - well, I know, although I don't

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1 know as a fact, I was told there were authorizations
2 issued in Canada in respect of the matters with which
3 we are concerned.

4 Q. All right. Now, a Canadian officer cannot testify in
5 the United States, can he, with respect to wiretaps
6 utilized for the purpose of an American investigation?

7 A. Do you mean American wiretaps?

8 Q. No, Canadian wiretaps.

9 A. No, he would not be under Section 178.20 unless he were
10 compelled to testify which he couldn't be in the United
11 States, he couldn't disclose evidence. He would have
12 to give that evidence in Canada.

13 Q. Now, have you seen before you testified here today
14 Defendant's Exhibit 2, being a letter from Issac, the
15 prosecution group head of the Toronto Regional Office?

16 A. Yes, I glanced at this just for a moment this afternoon,
17 yes.

18 Q. All right, and it says, does it not, quote, "I regret
19 however that the considered view of my department is
20 that the relevant legislation does not authorize the
21 release to you as a law enforcement agency outside of
22 Canada", this being addressed to a United States Attorney
23 in Buffalo, "any documentation or other records relating
24 to interceptions lawfully made in the course of a
25 criminal investigation in Canada", does it not?

1 A. Yes, it says that but that is --

2 Q. Do you agree with that opinion?

3 A. Yes, if in fact as I understand the circumstances the
4 investigation in Canada had concluded. That is, as I
5 said earlier, it is unlawful in my opinion for the
6 Canadian authorities to exchange information with the
7 American authorities, unfortunately.

8 Q. Has the investigation of Merchant Diamond Group in
9 Canada concluded?

10 A. As of today do you mean?

11 Q. Yes.

12 A. I am sorry I don't know that.

13 Q. Did it conclude, - was it concluded as of April 13,
14 1977 when Corporal Kossatz disclosed these Canadian
15 wiretaps to Postal Inspector Snyder?

16 A. No, sir, it had not because the Canadian authorities
17 were trying to obtain the assistance of the Americans
18 with respect to their investigation, vis-a-vis the
19 American side of the investigation and I am told that's
20 why the disclosure was made, to get that assistance.

21 Q. So that, to be very simple, and perhaps I am really not
22 understanding at all and I apologize because I don't
23 understand Canadian Law by a long shot, but if these
24 disclosures were made to assist a Canadian investigation,
25 that is okay, right?

1 A. Yes, sir.

2 Q. If these disclosures were made for the purpose of
3 furthering a U. S. prosecution, that is not okay, right,
4 unless it was just fallout from the Canadian investiga-
5 tion, isn't that a fair statement?

6 A. Yes, sir. The section which I am sure you are familiar
7 with says that the disclosure must be in the course of
8 or for the purpose of any criminal investigation.

9 Q. Well, that criminal investigation, of course, refers --

10 A. Must be in Canada.

11 Q. Refers to a criminal investigation in Canada, doesn't
12 it?

13 A. Yes, sir. That is what I said in the opinion, Exhibit 1.

14 Q. And not to further a criminal investigation in the U. S.
15 or Mexico or anyplace else?

16 A. Quite clearly.

17 Q. These disclosures are only good if they happen to
18 benefit a U. S. investigation tangentially, isn't that
19 correct?

20 A. Not necessarily tangentially, as long as the disclosures
21 are made to assist a criminal investigation in Canada.
22 It can be of direct assistance --

23 Q. I won't beat a dead horse. Let's talk about a couple
24 of other things. You cannot, can you, in Canada freeze
25 the assets of a prospective criminal defendant, can you?

1 A. I am not sure I know what you mean by "freeze assets",
2 because there are civil ways of freezing assets. One
3 can seize --

4 Q. I am at a little bit of a disadvantage today because
5 my Canadian criminal law expert is not here, so let me
6 see if I can do the best I can. All right. Here in
7 the United States, pursuant to these search warrants,
8 a lot of money belonging to Merchant Diamond Group and
9 its customers has been frozen, all right.

10 A. We can do better than that. We can seize the money if
11 it is the fruits of the crime, we can prove it.

12 Q. You have to prove it is the fruits of crime, don't you?

13 A. Yes, you do it on the basis of a search warrant where
14 you have sworn affidavits as you do here in the United
15 States. You have to swear that certain evidence is in
16 existence at a certain place and can be seized.

17 Q. Well, as a matter of fact, the assets and bank accounts
18 of the Merchant Diamond Group in Toronto weren't even
19 seized, were they?

20 A. I don't know, sir.

21 Q. None of the assets of the Merchant Diamond Group in
22 Toronto were seized by the Canadian authorities, were
23 they?

24 A. I have no idea, sir. As I say, this is an offense being
25 prosecuted by the Attorney General of Ontario.

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1 Q. I take it then that you really don't know very much
2 about the particular case that we are talking about,
3 do you?

4 A. Only the briefings I got from the prosecutor in Ontario
5 and the Assistant United States Attorney here.

6 Q. May I ask, sir, when you were first contacted with
7 respect to this case?

8 A. Yes. Friday afternoon at about 4:30, this last Friday.

9 Q. Who called you?

10 A. The first call I got was from an RCMP, a sergeant who
11 wanted my opinion, the one I expressed today, and then
12 I got a telephone call from an RCMP inspector.

13 Q. Do you know his name?

14 A. Yes, Inspector Stanler and again I told him that they
15 already had the opinion in writing some time ago and I
16 reiterated it and then I got a call from Mr. Black and
17 discussed --

18 Q. Harry Black?

19 A. The matter with him. Harry Black, and then eventually
20 I heard from the Assistant U. S. Attorney, Mr. Parry.

21 Q. You heard from Mr. Parry on Friday?

22 A. Yes, Friday at, - my best estimate is about 4:30 in
23 the afternoon.

24 Q. Did he tell you that the hearing was supposed to start
25 on Tuesday?

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1 A. I think he said on Tuesday and I told him that I had to
2 be in Miami Tuesday and that I could be available on
3 Monday. That would mean I would have to leave Ottawa
4 on Sunday and my recollection was that he said he would
5 attempt to see if the Court would convenience me and
6 have the matter heard on Monday and then we found out
7 today it was adjourned until tomorrow and we are back
8 here again today.

9 Q. Do you know Clay Powell?

10 A. Yes, sir.

11 Q. What was his job with the Ontario Attorney General's
12 Office?

13 A. He was, I think, Director of Prosecutions until he left
14 about a year ago, maybe a little less.

15 Q. He had a rather responsible position, did he not, with
16 the Ontario Attorney General's Office?

17 A. Clay, yes.

18 Q. And he was considered a fair and good prosecutor by your
19 office, was he not?

20 A. Mr. Powell was a competent employee, yes.

21 Q. Well, he was so competent, was he not, that he was
22 charged with enforcement of the Invasion of Privacy
23 statute?

24 A. No, he wasn't charged with the Invasion of Privacy
25 statute.

1 Q. Does he lecture on the Invasion of Privacy statute?

2 A. I don't know what he does now. Many of us lecture on
3 all kinds of things.

4 MR. RADLER: Just for the record, if the Court
5 please, I would like to have this
6 exhibit marked. I am almost through.
7 I guess I will have to do it in pencil
8 again.

9 THE COURT: Just mark it in pencil.

10

11 Defendant's Exhibit Number 14
12 marked for identification.)

13

14 BY MR. RADLER:

15 Q. I am almost through, your Honor. I show you what has
16 been marked Exhibit 14 for the defense. It is a letter
17 from B. R. Shulten for the Director, Toronto Regional
18 Office, and, your Honor, it is a certified copy of a
19 document contained in this court in the case of Brower
20 against Forbes previously referred to and that letter
21 being dated March 15, 1976 refers to Section 173.2(1)
22 of the Criminal Code and states that it is an indictable
23 offense to disclose the details of an intercepted
24 private communication with one of the exceptions that
25 we referred to here and then goes on to say, "It is our

1 position at this time that our Act does not expressly
2 extend to criminal matters or proceedings outside the
3 country". Do you still agree with that?

4 A. Yes, as I have indicated earlier. The letter that you
5 are referring, - well, I am sorry.

6 Q. You agree with that, do you not, sir?

7 A. With the statement you read me, yes. I haven't had a
8 chance to consider the letter so I don't know what it is.

9 Q. I am sorry. Let me show it to you.

10 A. I have never seen that letter before.

11 Q. Do you know who Mr. Shulten is?

12 A. I see from the letter obviously he was one of our
13 lawyers in Toronto. There are about fifty there and I
14 apologize for not knowing him by name.

15 Q. So he is in the same office as Mr. Issac?

16 A. Yes.

17 Q. The author of Exhibit 2 which I previously showed you?

18 A. Yes.

19 Q. Being your Toronto office?

20 A. Our regional office.

21 Q. Of the Department of Justice in Canada, right?

22 A. Yes.

23 Q. So those gentlemen, - and you really all agree on one
24 thing, that you can't disclose Canadian wiretaps for a
25 U. S. investigation, can you?

1 MR. PARRY: Do we really have to hear this
2 again?

3 THE WITNESS: You cannot disclose wiretap evidence
4 obtained in Canada strictly for U. S.
5 investigation. That is clear.
6

7 BY MR. RADLER:

8 Q. All right.

9 A. I should say the Mr. Hobbs referred to in the letter
10 works for me in Ottawa and I have a feeling that this
11 problem may have precipitated the opinion that was given
12 in the following month in April because we were getting
13 a lot of calls on this and finally the definitive
14 opinion was requested and this is the result of the
15 letter, April 13th '76 which is about a month after
16 this.

17 Q. That is the definitive opinion?

18 A. No. You are confusing the two. The April 13th '76
19 letter is Government Exhibit 1, I think it is called,
20 is the definitive opinion of the Attorney General of
21 Canada as expressed by the Department of Justice.

22 Q. And that is what you rely on, right, that definitive
23 opinion expressed in the April 13, 1976 letter?

24 A. No, I don't rely on it. It is partly my authorship
25 and it is my opinion.

1 MR. RADLER: I am through, I think. May I just
2 have a moment, your Honor.

3 THE COURT: All right.

4 MR. RADLER: No further questions on this, your
5 Honor.

6 THE COURT: Anything else, Mr. Parry?
7

8 REDIRECT EXAMINATION BY MR. PARRY:

9 Q. Yes, sir. Mr. Froomkin, there is only one point that
10 I would like to cover with you. When I spoke to you
11 on Friday, did I indicate to you that we expected the
12 defendants to be calling witnesses this afternoon?

13 A. Yes, sir, you did say that and you said that you would
14 hope the Court would allow me to be called out of
15 order since I wasn't available in the ordinary course
16 of events.

17 MR. PARRY: I would just like to clear that
18 on the record, your Honor, because there
19 has been some confusion.

20 THE COURT: Mr. Froomkin had a prior engagement
21 and had to be in Miami and he inconvenienced
22 everybody by stopping here on the way
23 down. All right. Anything else of the
24 witness?

25 MR. PARRY: I would like to see Defendant's 14

1 and then I think I will be done with
2 this witness. I have no further
3 questions of the witness, your Honor.
4 I would again reoffer to the Court
5 Government's Exhibit Number 1 which is
6 the opinion letter that the witness has
7 identified.

8 MR. RADLER: I have no objection.

9 THE COURT: Mark it in evidence as part of the
10 record.

11
12 (Government Exhibit Number 1
13 received in evidence.)
14

15 MR. RADLER: And I will for the record offer
16 Exhibit 14.

17 MR. PARRY: I have no objection.

18 THE COURT: Very well.

19
20 (Defendant's Exhibit Number 14
21 received in evidence.)
22

23 THE COURT: That is all of the witness then?

24 MR. PARRY: Yes.

25 MR. RADLER: I have nothing further, your Honor.

1 THE COURT: Thank you, Mr. Froomkin. We have
2 additional evidence tomorrow?
3 MR. RADLER: Yes, sir. We are prepared to go
4 forward.
5 THE COURT: I think we will be ready on time.
6 What time did we say?
7 MR. RADLER: 10:00, I think. Whatever is
8 convenient for your Honor.
9 THE COURT: 10:00 o'clock is fine.
10 MR. RADLER: Yes, sir.
11 MR. PARRY: Thank you, Judge.
12 THE COURT: All right.

13
14 (Recess taken at 4:25 p.m.)
15
16
17

18 * * * * *
19
20
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22
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24
25

1 PROCEEDINGS: June 21, 1977, 10:40 a.m.

2 APPEARANCES: As before noted.

3

4 THE COURT: Mr. Radler, are we ready to
5 convene?

6 MR. RADLER: Yes, your Honor. Mr. Grelick.

7

8 G A R Y G R E L I C K (190 Bryant Street, Buffalo, New
9 York), a witness called by and in behalf of the defendant,
10 having been first duly sworn, was examined and testified as
11 follows:

12

13 DIRECT EXAMINATION BY MR. RADLER:

14 Q Mr. Grelick, what is your business?

15 A At the present time, I have a gem stone importing
16 business in Buffalo, New York. The name of it is
17 Bomi. We are in the business of importing and
18 trading and selling gem stones.

19 Q Can you tell me for how long that business has
20 existed?

21 A The business itself has been, - I think we are going
22 on about our forty-sixth year.

23 Q Is it a family business?

24 A Yes, it is a family business.

25 Q And where are your offices?

A We are located in the Ellicott Square Building,

1 226 and 227, in Buffalo, New York.

2 Q Is your business limited geographically to Buffalo?

3 A No, it is not. Most of our business is done within
4 the Western New York area, but a great percentage of
5 our business is done throughout the United States.

6 Q And in connection with your business, have you traveled
7 abroad?

8 A Yes. I make two trips. In the beginning of each year,
9 I travel to South America and in the fall of each year,
10 I go to East Asia.

11 Q Before we get into some of your trips, could you tell
12 me something about your own educational and
13 professional background?

14 A Yes. In regards to the business itself, I was more
15 or less born in the business. I have always, you know,
16 been in the office. Educationally, I went to school
17 in Buffalo, New York, Park School. From there, I went
18 to Alliance College in Cambridge Springs, Pennsylvania.
19 I took a biology course there and graduated with a
20 BS in biology, a pre-med major. From there, I got a
21 graduate assistanceship to Edinboro State College,
22 which is the largest state college in Pennsylvania
23 and proceeded in graduate studies in microbiology
24 which is another biology orientated field. Due to
25 some illness in the Buffalo Office, our office here

1 in Buffalo, New York, - it was during the summer
2 recess, I came and helped out. There was some illness
3 in the family. When everyone got better, I enjoyed
4 what I did, so I decided to stay with the business,
5 but I decided that in order to get into the business,
6 especially being as young and aggressive as I am, we
7 find in our business that it is done mostly with
8 experience, experience being the great teacher, so I
9 though maybe by getting an educational insight into
10 the jewelry and the gem business itself might be
11 advantageous to me as far as customer relationship,
12 where they might ask for me rather than asking for an
13 older experienced person.

14 Q What did you do to further that end?

15 A I proceeded to the Gemological Institute of America
16 which is known as the GIA. It is located in California
17 and now has a branch office in New York and I took the
18 residency course there which means you stay in
19 residency and take three courses and then take a
20 comprehensive exam over the three courses.

21 Q And can you tell us the status, if any, of the
22 Gemological Institute of America within the diamond
23 industry?

24 A Yes. It is probably the most respected organization
25 in the diamond industry today. Let me expound on that

1 a little bit. The course itself takes into, - three
2 courses, The first course being diamonds which is
3 the study of diamond grading, appraising, all the
4 different effects, chemical orientation, origin,
5 the cutting of the stone, all the scientific terms
6 that are necessary for identifying and learning more
7 about the gem stone diamond and after completion of
8 this test, with a 75 test score or above, you are
9 allowed to proceed on the second course which is
10 gem identification. This course gives you a background
11 in the instruments that are used to differentiate
12 between natural items and synthetic items, how the
13 stone reacts to specific gravity, the density of the
14 stone, the refractive indices, all things that might
15 separate the synthetic from the natural.

16 Q You will have to slow down a bit.

17 A Okay. I am sorry. After completion of this course
18 with a 75 test score or above, you proceed to the
19 colored stone course which is more of a book learning
20 type course. In other words, the gem ident is a
21 practical part of it. The colored stone gives you
22 more of a basis as far as chemical orientation,
23 crystallography, the origins of different stones, the
24 parts of the country they come from, all sorts of things
25 being of intrinsic value to a dealer or the jewelry

1 industry in general, or even to the common layman
2 and upon completion of this course with 75 average or
3 above, you are allowed to take the graduate gemology
4 course which is a resident course which gives you a
5 resident degree.

6 Q Did you do so?

7 A Yes, I did.

8 Q In addition to membership in the, or having a degree
9 from the Gemological Institute of America, are you a
10 member of or have you attended any other gemological
11 institutes?

12 A Yes. I am a member of the Gemological Institute of
13 Japan and also the Gemological Institute of Great
14 Britain. I've just completed all of the courses in
15 the Great Britain which took me approximately four
16 years. I am in the process of taking their final
17 exam at the end of this month.

18 Q Just a few more questions on your background. Have
19 you written any articles or are you on any editorial
20 boards of trade publications?

21 A Yes. At the present time, right now, I have four
22 articles that were accepted and I have become
23 consultant gemology editor for the National Jeweler
24 Magazine which is a monthly publication and is the
25 largest publication of its kind. It goes all over the

1 world. It is not just in the United States. My
2 purpose there is on my trips, I give insight as to
3 what is going on in other countries, what kind of
4 gem stones can be found, placing the gem stones,
5 all sorts of interesting things that are of interest
6 to the jewelry trade throughout the world.

7 Q Mr. Grelick, have you written any books or are you
8 in the process of writing any books, particularly as
9 they relate to diamonds?

10 A Yes. I have completed one book, a consumer's guide
11 to buying diamonds. It is just finished being laid
12 out and it should go to the printers the end of this
13 week or the beginning of next week. That is the first
14 in a four-part series and I have another manuscript
15 on rubies, emeralds and sapphires individually and
16 that will go to the printer, I hope, by the end of
17 this year.

18 Q Now, Mr. Grelick, in preparation for your testimony
19 today, you and I have met in my office on several
20 occasions, have we not?

21 A Yes.

22 Q Before you came into this case, did you and I know
23 each other in any way?

24 A No. I saw you once at the golf course with Mr. Gelman.

25 Q All right. That was at Cragbyrn where I don't belong,

1 but you saw me down there.

2 A. Right.

3 Q. All right. Do you know how you came to my attention?

4 A. Well, I have been getting a little local notoriety
5 and that might be it.

6 THE COURT: May I ask whether Mr. Radler was
7 a diamond in the rough when you saw him
8 that day?

9 BY MR. RADLER:

10 Q. I was in the rough a great deal, but no diamond.
11 I won't mark these, but these are some articles in
12 the Buffalo papers with your picture and some stories
13 about you, is that right?

14 A. Yes, it is.

15 Q. And I did show you this as a basis upon which we came
16 across you on some research?

17 A. Yes.

18 Q. All right. One other question. Do you have any
19 connection at all with the defendant in this case,
20 Merchant Diamond Group, Inc.?

21 A. Well, as most people in my business who know my
22 business, I am probably a little bit out of context
23 as far as geographical area. I should probably, in
24 my business, be in New York City or California or
25 somewhere, but we are located here and throughout the

1 course of a year, I will get a call from almost
2 everyone that is in with the business. I don't think
3 there is a jewelry store or someone that deals with
4 stones that hasn't called me, you know, within a year,
5 pertaining to some matter. This company called me
6 maybe about four months ago, did not talk to me
7 personally, but asked me if I do appraise and if I
8 do sell diamonds and the answer that was given to them
9 was "yes", and we sent them some information and that
10 is the last we heard of them.

11 Q So you have had no other contact at all with them?

12 A No, I haven't.

13 Q And you are being paid here by our office for your
14 time as an expert witness, are you not?

15 A Yes, I am.

16 Q Now, I have explained to you, generally, that the
17 purpose of your testimony is to give certain expert
18 opinion or opinion testimony relative to diamonds and
19 in preparation for that, could you just briefly define
20 some terms for me and for the Court so perhaps we
21 can put your testimony in context. Could you explain
22 to us the difference between rough, on the one hand,
23 diamonds and cut and polished diamonds on the other?

24 A Okay. First I would like to preface, and I hope this
25 won't hurt the sales of my book when I give out this

1 information, but the difference between rough and
2 finished goods in the trade, and these are layman's
3 terms, is that rough is a stone that is turned, - this
4 is according to the trade. In other words, if you
5 look it up and denoted the term, coming directly from
6 the ground, its origin, the rough that most of us see,
7 have been extracted from blue ground or its matrix,
8 any ground that surrounds the rough stone or the
9 crystalline structure of the diamond has been eliminated
10 and that is called a rough stone. It means it hasn't
11 been enhanced beauty-wise, just natural as it comes from
12 the ground. That is our understanding of the term
13 "rough".

14 Q What is a cut and polished stone?

15 A Okay. Cutting and polishing are actually two different
16 terms. When you cut a diamond, you may cut it or
17 cleave it to begin your polishing process. We call it
18 finish. Either it is rough goods or it is finish
19 goods. Finish goods have been enhanced, which means
20 that they have been cut and they have been polished
21 and faceted to yield the most weight and the most
22 beauty.

23 Q What is it that you sell, rough or finished?

24 A I sell finished goods.

25 Q All right. Now, one other matter of information before

1 we ask you some opinions. Do you or could you tell
2 us how diamonds are graded? What I am referring to
3 is the four "C's".

4 Q Okay. This is something that I think, since diamonds
5 became of great interest to the public and that has
6 been many, many years, they have always been explained
7 in four categories and these are the four "C's". No
8 matter where you go, this is the standard procedure.
9 The four "C's" are the cut, the clarity, the carat
10 weight and the color of the diamond. Okay. All of this
11 is explained and this is why the Gemological Institute
12 of America is so important. It is explained in certain
13 standard terms. Now, these terms are varying terms,
14 I want that to be understood. They do vary, but they
15 only vary maybe a grade or so. In other words, in
16 the clarity grade, you might go from a flawless stone
17 to a VVS 1 or VVS 2, VS 1, VS 2, SI 1, SI 2 and then, -
18 If I am going too fast, the meaning of this is a very,
19 very slight one.

20 Q Let me ask you something about that.

21 A Yes.

22 Q With respect to VVS 1 and VVS 2 stones, can you tell
23 us whether there is any substantial difference in the
24 quality of those stones?

25 A Well, theoretically, there is, but like anything,

- 1 it is a human base fact, so what happens if you send
2 a stone to the Gemological Institute of America or
3 you send it to Gary Grelick in care of Bomi and you
4 send me, let's say, a legitimate VVS 1 stone or VVS 2
5 stone, I might grade it either way. In other words,
6 I wouldn't grade it flawless because I might find
7 something, but it is a matter of where that inclusion
8 or occlusion occurs and in no certain terms, - some
9 days you may look at a stone a little better than you
10 look at it other days. Everybody grades a little
11 differently. My feeling is that I give the benefit
12 of the doubt to the stone. I like to upgrade a
13 stone. Maybe it is a marginal thing, if it is a
14 VVS 1 or a VVS 2, sometimes I go to VVS 1. I give it
15 a little upgrading. That is a personal thing.
- 16 Q Generically, are VVS 1 and VVS 2 within the same
17 category of diamonds from a quality standpoint?
- 18 A They are very, very extremely close.
- 19 Q All right. Now, over the last several years, have you,
20 yourself, engaged in the purchase of and sale of what
21 I would like to call generically VVS diamonds?
- 22 A Yes. Our customers primarily want finer goods. When
23 they call my firm, they are looking for a VS stone
24 or above.
- 25 Q Above VS then is finer goods, in your judgment?

1 A Yes, in my judgment, yes.

2 Q All right. Now, please look at Exhibit 4 for the
3 defendant, Mr. Grelick, which is a chart showing
4 appreciation of diamonds from September of '76 through
5 March of '77 and I think you were here the other day
6 when we had testimony based upon the records of our
7 client, Merchant Diamond Group with respect to the
8 appreciation based upon their own sales records or
9 their own purchase invoices, I am sorry. Have you,
10 yourself, purchased in the period September '76
11 through March '77 VVS stones of the same type listed
12 on the first sheet in Exhibit 4?

13 A Yes.

14 Q And could you examine that? You have looked at it,
15 have you not?

16 A Yes.

17 Q Can you tell me whether the appreciation factors
18 shown on Defendant's Exhibit 7 are consistent with
19 your own experience as a purchaser and subsequent
20 seller of diamonds of VVS quality?

21 A Well, they are close, but my explanation for this is
22 that on a lot of these, certain sizes appreciate more
23 than other sizes and for me, there has been a big
24 increase in the price of diamonds, only because it is
25 a world-wide market now. The increased market has

1 increased sales and it is a bid and take operation.
2 In other words, the mode of purchasing is if you
3 need the goods, sometimes you have to pay a higher
4 price to get them because you have to supply your
5 customers. This is what keeps you alive, keeps you
6 in business and I would say that they are close,
7 the prices.

8 Q When you say "close", do you mean close to your own
9 experience?

10 A. I would say the percentages are very close. My only
11 explanation is very close that on specific stones
12 and specific sizes or specific quality, I can give
13 you prices. I can tell you how much they have
14 increased. My own experience dealing with twenty
15 pointers, okay, I call them meled, smaller stones.

16 Q You are referring now to the - -

17 A. Twenty pointer. All right. They have gone up almost
18 forty per cent since the beginning of the year.

19 Q Since the beginning of 1977?

20 A. Since the beginning of this year. I just talked to my
21 broker on Thursday, so that is what I am paying for
22 them now. This is my own personal opinion. I feel
23 that I am in business and I am very acknowcentric
24 and I feel, I believe I am as well or better than
25 anybody else in the business and this is a sort of

1 a confidence thing that you have to have to be in my
2 business, so that I know that it couldn't vary anymore
3 than maybe three, four or five per cent among other
4 dealers.

5 Q That is your experience when you are saying will not
6 vary more than three, four or five per cent on the
7 figures set forth in Exhibit 7?

8 A I don't think there is any way if they are legitimate
9 source, they are goods and they are cut at today's
10 market. Now, if they are old goods from an estate
11 or something else, that is something else altogether.
12 I am talking about the legitimate cut and finished
13 goods, new goods, finished goods.

14 Q So if you will assume that these are VVS diamonds
15 purchased from reputable international sources, not
16 from estates, but from suppliers, would the chart
17 set forth in Exhibit 4 be consistent with your own
18 experience as a purchaser of diamonds?

19 A Yes, it would. I haven't examined these stones. I
20 believe that is what they are, they are VVS 1, VVS 2.
21 This is where some of the appreciation has come from
22 in these type of goods.

23 Q Now, Mr. Grelick, I have shown you the affidavit of
24 Ronald L. Snyder, a Postal Inspector, dated April 13,
25 1977 which was submitted to this Court in support of

1 an application by the Government for a search and
2 seizure warrant and an order freezing the accounts of
3 our client, Merchant Diamond Group, have I not?

4 A Yes, you showed me that.

5 Q I would like to direct your attention to that
6 affidavit and I apologize. There are some notations.
7 This is a work copy and I will try to have you dis-
8 regard them. Do you have a clean copy?

9 MR. PARRY: May we do this; I have one.

10 MR. RADLER: I would rather show him one that
11 is not marked up.

12 MR. PARRY: Let's use the one in the record
13 just to keep the record straight.

14
15 BY MR. RADLER:

16 Q All right, fine. Showing you Government's Exhibit 1A,
17 being the affidavit referred to, Page 2, there is a
18 statement in this affidavit that the RMC, - RCMP has
19 been advised by Mr. Robert Arend, a member of the
20 Gemological Institute of America, - that is the
21 organization of which you are also a member, is that
22 correct?

23 A Well, you are not a member. You are a graduate.

24 Q A graduate.

25 A Right.

Q And a recognized expert in the field of gemology.

1 Have you ever heard of Robert Arend?

2 A No, but he may not have heard of me either, no.

3 Q All right. You don't recognize him anyway?

4 A No.

5 Q It states that the value of diamonds as a commodity
6 has had a maximum rate of appreciation in recent years
7 of between approximately eight to nine per cent per
8 year. Moreover, this rate of appreciation applies to
9 raw, uncut diamonds which appreciate in value at a
10 faster rate than the cut and polished diamonds being
11 offered for sale by Merchants, Limited. Now, based
12 upon your experience and the credentials which you
13 have given to this Court, do you agree with that
14 statement?

15 A Well, there is a lot of misnomers in there. I don't
16 agree with it, no.

17 Q You do not?

18 A No.

19 Q All right. Will you tell the Court why you do not
20 agree with that statement?

21 A Well, you can't, - first of all, you can't grade
22 appreciation of a rough stone. I mean, a raw, uncut
23 diamond. The reason being that it is a guessing game.
24 Even to experts it is a guessing game, so, in other
25 words, you have a high value and a low value. In

1 other words, when you buy, when you purchase rough,
2 you may go for the low value. I am talking about the
3 independent dealer who is buying rough. Take myself,
4 I have been in South America, looked at South American
5 diamonds rough, Brazilian diamonds that are in the
6 rough. It is a blind item. You have what they call
7 a crystal that is rough on the outside. You can't see
8 inside. You don't know what is inside of it. You can
9 polish a window which is just a little polishing on the
10 side and take a look inside and get an idea what you
11 might get, but it is still a guessing game. You give
12 it to the cutter and you have a two carat piece rough,
13 and you might get a half carat stone out of it, and
14 then again, you might get a three quarter carat stone.
15 Q So do rough diamonds appreciate at a value faster than
16 cut and polished diamonds, in your opinion?
17 A No.
18 Q All right. Now, as a matter of fact, - and that is
19 the statement of the Postal Inspector here, isn't it?
20 A Yes.
21 Q Now, as a matter of fact, do cut and polished diamonds
22 of a VVS quality from the type twenty pointers, as
23 you call them, to one pointers, in the last year, have
24 they generally appreciated at a rate greater than eight
25 to nine per cent?

1 A Yes.

2 Q And can you give us some estimate in general terms
3 of the rate of appreciation of diamonds of the VVS
4 quality from twenty pointers to one carat?

5 A Well, see, they all go in cycles. We are controlled,
6 actually by the consumer. Whatever the consumer wants,
7 that's what we got to get. Now, on the other hand,
8 Debeers Consolidated controls all diamonds and they
9 work in a reverse cycle. Whatever everybody wants,
10 they keep off the market so that keeps the price up.

11 Q I come back to my question.

12 A Okay.

13 Q Can you give me some general idea?

14 A Well, not, - I think the best way to explain it might
15 be a carat. Now, I don't know, what years do you want?

16 Q Over the last twelve months.

17 A Okay. I would say the least amount of appreciation
18 has occurred in carat stones.

19 Q The least.

20 A The least, VVS 1 and VVS 2 because they had the
21 greatest increase a year or two years ago.

22 Q Let's go back then the two years.

23 A Okay.

24 Q What was their appreciation?

25 A Three years ago, and I am talking about a dealer limit.

1 I don't know if you will find this in the store, but
2 let me just go ahead as the diamond club, per se, would
3 sell it over the counter, and this is your bargaining
4 and trade. This is a give and take commodity. If
5 you need a stone, you can pay fifteen, sixteen,
6 eighteen per cent more if you have a customer for it.
7 You may cut down on your profit margin to make the
8 sale. They were selling a carat stone at the club
9 VVS 1 G color and a good make for around anywhere
10 between twenty-two and twenty-five hundred a carat.
11 Okay, that's the VVS 1, VVS 2 quality, G color and
12 a good make and I mean it falls within the ideal
13 standards. This year, you go to buy the same stone, -
14 this is at a dealer price and you are looking somewhere
15 around forty-two hundred to forty-five hundred per
16 carat.

17 Q Allright. Just a couple of other questions. I have
18 a hypothetical for you, Mr. Grelick. If a consumer
19 purchases a VVS 1 or VVS 2 diamond of good color, with
20 the intention of holding it for a reasonable period
21 of time, in your opinion, is such a purchase a good
22 investment?

23 A Well, I think diamonds are a good investment. I
24 definitely do. I think a lot of it depends on the
25 person that's investing in it and everything else,

1 but I believe diamonds are a good investment in my
2 opinion and I think the records will bear that out,
3 but I am not fortune teller. If I knew what was
4 going to happen from now, I wouldn't have to worry
5 about it two years from now.

6 MR. RADLER: May I just have one moment, your
7 Honor.

8 THE COURT: It was ever thus.

9
10 BY MR. RADLER:

11 Q Just one or two other questions.

12 A Yes.

13 Q Attached to our motion papers, which form the basis
14 for this hearing, is an exhibit denoted Exhibit I,
15 Mr. Parry, being a letter from Joseph Schlissel of the
16 Diamond Registry. Do you know who Mr. Schlissel is?

17 A Yes.

18 Q Well, what is the Diamond Registry?

19 A Okay. Well, we are a member of the Diamond Registry.
20 The Diamond Registry is a computer-controlled company
21 of which Mr. Schlissel is the president and I believe
22 the owner. I am not really sure. What they do, if I
23 have a stone in Buffalo, New York, a couple of stones
24 which I have trouble selling them, let's say, in this
25 area. This area is already controlled. We know what

1 is going to sell in this area, but maybe in California
2 someone is looking for a certain stone, maybe a four
3 or five carat stone. I may have that stone in Buffalo,
4 New York, so to get us together, you work through the
5 Diamond Registry. In other words, my stone would be
6 listed and a dealer out in California phones in and
7 says, "Joe, have you got such and such a stone". "Yes,
8 Gary Grelick in Buffalo, New York has it".

9 Q Okay.

10 A And we pay him a percentage for that. He is getting
11 us together.

12 Q Is he a recognized authority on diamonds?

13 A Well, he knows the market. He is buying and selling.

14 Q He knows the market?

15 A Right.

16 Q Do you agree with this statement, "According to a chart
17 issued by the Gemological Institute in 1961, a flawless
18 D colored diamond weighing one carat would sell, at
19 wholesale, for \$1,250 per carat. The same quality
20 today would cost between seventy-five hundred and
21 eight thousand dollars per carat", and listen to this,
22 "For a VVS 1 in G color, you would have to deduct
23 fourteen per cent according to the deduction chart
24 of the Gemological Institute of America". Do you
25 agree with that?

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1 A Yes, I agree with the amount, the figure he has
2 developed. I don't agree with the same price structure,
3 but the difference is the same, okay.

4 Q I think that is all, but again, one second. Mr.
5 Fitzgerald indicates that my question apparently said
6 1961 and if the record so reflects, I meant to say - -

7 A '67.

8 MR. RADLER: 1967. I have no further questions.

9 THE COURT: You meant 1967?

10 MR. RADLER: Yes, sir.

11

12 CROSS EXAMINATION BY MR. PARRY:

13 Q Mr. Grelick, we haven't met before. I have seen you
14 around. My name is George Parry.

15 A Yes, Mr. Parry. How are you?

16 Q Okay. I would like to ask you, first of all, who are
17 your customers in your business?

18 A Okay. I service almost any store that has got a good
19 credit rating. In other words, if I am going to get
20 paid, I serve those accounts. I do all the appraising
21 for all the sales stores in all of New York State.
22 I supply them with many of their specialty goods.
23 I have a number of local jewelers like Jaccard's, I
24 sell to, Gamler's. I have accounts on the West Coast,
25 Jensen & Talbert in California, Regan Originals in

1 Florida. There is a lengthy list.

2 Q They are all retail outlets?

3 A Absolutely. I do sell to dealers too. I sell to
4 people that are in the same business I am in. When
5 I come back from South America and I have some emeralds
6 I can't use that many in Buffalo, New York, I make
7 consignments and arrangements in New York City before
8 I leave and sometimes I pick the cream for myself and
9 distribute the others, okay.

10 Q Yes, only reasonable. Okay. Now, all of these other
11 dealers that you sell to, though, they are, - well,
12 let me put it this way. Your customers would fall into
13 two categories, either other dealers who I assume
14 are like suppliers.

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q And retail outlets.

19 A Well, not necessarily. There is a number of different
20 ways.

21 Q Okay.

22 A There are dealers, there are retail outlets and there
23 are also retail customers. I have a lot of relatives
24 and friends and that close too, to get the record
25 straight.

- 1 Q Okay.
- 2 A It is not absolutely on the streets, but I do get
- 3 business from the public.
- 4 Q You get occasional individuals who purchase at retail
- 5 prices from you?
- 6 A No.
- 7 Q No?
- 8 A I give them the same price I give the dealer.
- 9 Q Oh, okay.
- 10 A All right.
- 11 Q Now, let me ask you this; what is a keystone?
- 12 A A keystone is half. In other words, if something, -
- 13 in other words, I work on a keystone system too.
- 14 If a jeweler comes in and takes a ring out from me
- 15 on memorandum, - that's consignment, it is marked
- 16 a thousand dollars, he knows it costs him \$500.
- 17 What he does with it is his own business. He takes
- 18 it to his store and if he sells it for fifteen hundred
- 19 or if he sells it for six hundred, I don't know. You
- 20 know, whatever he does is his business. All I know
- 21 is what I have to get out of it.
- 22 Q Now, in regard to diamonds, as an investment now - -
- 23 A Yes.
- 24 Q Let me pose a situation to you.
- 25 A Okay.

1 Q Suppose you were approached as a supplier and an
2 individual wanted to purchase a diamond from you at
3 say, one and a half times to two times what you paid
4 for that diamond.

5 A Well, can I just interject a minute?

6 Q Yes.

7 I don't know if it will help to clear up the question.

8 A I don't price my goods that way.

9 Q I understand.

10 A Whatever the percentage is, whatever it costs me to
11 replace what I have got, I add a percentage on to
12 that.

13 Q All right. Why do you do that?

14 A Well, because I have to replace the goods. In other
15 words, if I sell a half carat stone, theoretically,
16 I have to buy another half carat stone, but it
17 really doesn't work that way. I may have fifty half-
18 carat stones and I may sell thirty and I buy another
19 forty, you know, that sort of thing, but theoretically,
20 I still have got to replace it. In other words, if
21 it cost me five hundred to buy a carat stone and it is
22 going to cost me seven hundred to replace it, I am
23 not going to sell it for six fifty.

24 Q Yes.

25 A You know, I may sell it for eight hundred or seven fifty.

1 a carat.

2 Q All right.

3 A That is because of inflation, to keep up with inflation.

4 Q I understand that. What about the situation that I am
5 talking about. I recognize this is not your practice,
6 but I want to borrow your expertise, if I can.

7 A Okay, sure.

8 Q If you were to take a stone and mark it up, say, twice,
9 or for that matter, three times what its price is to
10 you and you were to sell that to an individual, how
11 long would that individual have to hold that stone
12 before he could realize his initial investment in it?

13 A Okay. That's an interesting point that has been brought
14 up in a lot of magazines and everything else. You are
15 assuming, - let's get me out of the picture, - let's
16 assume a retail store buys it and they are being
17 charged two or three times, whatever it is, let's say
18 two times.

19 Q That is the retail store.

20 A Okay. The retail store is selling to an individual
21 for two times, is that what you want to use?

22 Q Well, let's say two times.

23 A Two times, okay, because there are some stores use two
24 and a half times.

25 Q Okay.

1 A But let's say two times, I would say before, - and
2 this is still speculative, you have still got to find
3 a buyer. I would say maybe five years.

4 Q Okay. Now, and that would be to realize, - for the
5 individual to be able to sell the diamond just to get
6 his purchase price back?

7 A Yes.

8 Q Okay. Now, where would the individual go to sell his
9 diamond just to get his purchase price back?

10 A Well, that's what he's got to find. He is not a
11 retail store. He has got to find somebody to sell
12 it to. If he is treated like you say, two times,
13 there are plenty of places that will buy diamonds.
14 There are retail customers you can sell it to to make
15 a profit, but that is something, you know, who knows,
16 you have got to sell it. You have got to dispose of
17 it some way. I have helped people. In other words,
18 if you've looked in the phone book, it is not every day
19 that one or two customers come in and say, you know,
20 "I have just lost my engagement", or something like
21 that, or "My grandmother, where can I sell it". If
22 it is a big piece, I will find him a buyer, if it is
23 a big antique piece, really splashy, not Buffalo,
24 but maybe California and I will hang onto a percentage
25 myself. You know, maybe I will take out six or seven

1 per cent, you know. I will tell the people that. I
2 will tell them I will try to get as much as I can for
3 it. They do it and a lot of people have come out all
4 right. All I know is your value will come to even
5 in about five years at a two time markup retail.

6 Q All right. How about with a three time markup?

7 A Three time markup, now, we are dealing with theoretical
8 goods that are brand new, okay. In other words, like
9 I say, there are stores that work on a two and a half
10 time markup and they have it in stock for three years.

11 Q Yes.

12 A So working on that theory, I would say seven years,
13 six and a half.

14 Q Okay. Now, if someone were to come to you and say
15 to you, "I want to purchase diamonds as an investment".

16 A Yes.

17 Q And they were to name a price that they had been
18 offered that was, say, two to three times what the
19 supplier's price was, would you tell that person that
20 that was a good investment, in terms now of making
21 money?

22 A Well, I will explain it the way I handle it and then
23 if that is not your answer, then you ask me again.

24 Q Okay.

25 A If someone comes in and tells me they are buying a

1 stone for investment, I tell them they have to pay me
2 for an appraisal and I appraise it at retail. I don't
3 know if that answers your question, in other words,
4 and then they have to make up their own mind whether
5 it is a good investment or not. When they see the
6 papers, and I do it gemologically and I give them a
7 form and then it is up to them to make the decision
8 and they turn around to me most of the time and say,
9 "Gee, what do you think".

10 Q Yes.

11 A I don't know. It depends on the individual case. Most
12 of the times I tell them this, diamonds are a good
13 investment. Try and buy them as well as you can. If
14 it is all the money you got, you know, don't put it in
15 diamonds, but if you have got money, you put it in the
16 bank or you put it in real estate. Diamonds are the
17 best thing you can have because if something happens
18 in this country, you can always put the diamonds in
19 your pocket and you can go anywhere, they are transport-
20 able, so I go through the whole thing and whether
21 diamonds are a good investment or aren't, I ask what
22 the situation is. Diamonds are a good investment.

23 Q Yes. Now, my question is - -

24 A Okay.

25 Q You have indicated on a three hundred per cent markup

1 on diamonds an individual would have to hold those
2 diamonds for seven years.

3 A. Yes.

4 Q. Before he would have a market available to him where
5 he could sell those diamonds for the original purchase
6 price?

7 A. Yes.

8 Q. He bought seven years ago.

9 A. Yes.

10 Q. Is that right?

11 A. Yes.

12 Q. Now, when you met with Mr. Radler, did you have an
13 opportunity to review the entire affidavit prepared
14 by Postal Inspector Snyder?

15 A. No.

16 Q. Well, I would like you to take a look at Page 3.
17 This is Government's Exhibit 1A now which is the
18 affidavit of Postal Inspector Snyder and if you would
19 take a few moments to read Paragraph 2 and I will
20 ask you some questions about it.

21 A. Okay.

22 THE COURT: What page?

23 THE WITNESS: 3.

24 BY MR. PARRY:

25 Q. This is Page 3, Judge.

1 A. Do you want me to read Item 3 also?

2 Q. Let me see. No, that's not necessary.

3 A. Okay. Okay, I have read it.

4 Q. All right.

5 A. Can I keep it here?

6 Q. Yes. I think it would be helpful. Now, in regard to
7 the, - in regard to the second sentence, - that is the
8 one that comes right after the underlined sentence.

9 A. Yes.

10 Q. "The RCMP advises that it has contacted numerous
11 experts in gemology, diamond importing and related
12 fields".

13 A. Yes.

14 Q. "And that according to these experts, no retail market
15 exists for the resale of diamonds and, further, that
16 the only ready market for diamonds is at the wholesale
17 level". Given now the situation that I have
18 described - -

19 A. Yes.

20 Q. Where the individual is buying at a two hundred or
21 three hundred per cent markup, would that be an accurate
22 statement in your opinion?

23 MR. RADLER: Your Honor, for the record, let me
24 object because there has been no proof
25 that the individuals in these cases are

1 buying at two hundred or three hundred
2 per cent.

3 MR. PARRY: Well - -

4 MR. RADLER: Excuse me.

5 MR. PARRY: I am sorry.

6 MR. RADLER: I am making it for the record. He
7 is asking him to assume something that
8 is not part of this record except by
9 the affidavit which is in question here.

10 THE COURT: I will permit the answer, but
11 certainly, he will have to support the
12 facts by the record.

13 MR. RADLER: Yes, sir.

14 THE COURT: Or support the assumption by the
15 record.

16 MR. RADLER: I just want the witness to under-
17 stand there has been no proof by the
18 Government or anybody that there is a
19 sale of two hundred to three hundred
20 per cent and this is some allegation in
21 an affidavit that we are attacking.

22
23 BY MR. PARRY:

24 Q All right. Just so you understand, let's treat this
25 as a hypothesis by the Postal Inspector.

1 A Okay.

2 Q Now, given that hypothesis that we are talking about,
3 individuals who purchase diamonds at a two hundred to
4 three hundred per cent markup over what, say, a
5 supplier would pay for them, go now to the statement
6 in the affidavit that there is no retail market exists
7 for the resale of these diamonds; further, that the
8 only ready market for these diamonds is at the wholesale
9 level. In other words, selling them at a loss, would
10 you agree with that statement?

11 A Well, let me just say I don't agree with the statement
12 to the point that there is no retail market, okay.

13 Q All right.

14 A I think it is a little strong. There have been cases,
15 and this is in my personal experience, where people
16 have come, have bought diamonds and have sold them to
17 a friend, next door neighbor, whatever it is, come
18 into my office and have them appraised and then they
19 pay a certain amount, whatever the appraisal is, I
20 don't know, but I have seen it done in my office, you
21 know, numerous times, so that, - and these are people,
22 you know, that are not in the diamond business whatever,
23 so I would say that no retail market is a little
24 strong. You can sell it. There is nothing preventing
25 you from selling it to Mr. Snyder, you know, if he has

1 confidence and faith in you.

2 Q However, as an investment scheme, say, where an
3 individual buys a diamond two hundred to three hundred
4 per cent what the supplier paid for it, is there, -
5 well, for example, could he take it to a jewelry store
6 and sell it there?

7 MR. RADLER: When? I object to the question.

8
9 BY MR. PARRY:

10 Q At any point. Well, let's say he buys it, he holds
11 it for a year, could he then go into a jewelry store?
12 Do you think he would get a warm reception in a
13 jewelry store if he went in and said, "I want to
14 realize my appreciation in this diamond"?

15 A He would get a warm reception if he had about a \$6,000
16 diamond and wanted two thousand for it.

17 Q Yes.

18 A And maybe might pay fifteen hundred, depending on
19 how long he had had it. I think that the diamond, -
20 I don't know what kind of an answer you want, but my
21 opinion is that the diamonds are good investment long
22 term. You are telling me if I sell it to you today
23 and you go tomorrow to sell it, I don't think, - that
24 is not - -

25 Q Long term, however, you have already indicated on a

1 three hundred per cent markup, an individual would
2 have to hold those diamonds seven years to realize
3 his purchase price.

4 A Well, this is all speculated on what the purchase
5 price was, but yes, that is exactly what I feel.

6 Q All right. Now, let's go on in the statement here
7 on Page 3.

8 A Yes.

9 Q There is the sentence, "These retail prices vary from
10 two hundred per cent to three hundred per cent of the
11 wholesale price paid by Merchant, Limited. Accordingly,
12 unless a customer is willing to sell his diamonds on
13 the wholesale market and take a substantial financial
14 loss in his investment, he has no ready market in
15 which he can dispose of his diamonds". Now, I suppose
16 the emphasis should be placed here on "ready market".
17 Can you tell us whether or not you agree or disagree
18 with that statement?

19 A Well, are we limiting the two hundred or three hundred
20 per cent? That, I don't know anything about that.

21 Q Well, let's assume - -

22 A If you are asking me - -

23 Q Let's keep the two hundred to three hundred per cent
24 in.

25 A Okay, in it or out of it, all right. I would say it

1 is a very limited market. I mean, there is no ready
2 market for it.

3 Q Yes.

4 A You are telling me about immediate liquidation?

5 Q Right.

6 A You are telling me buying it one week and selling it
7 the next week?

8 Q Right.

9 A You are not talking about two or three years.

10 Q All right, okay. May I have just a moment, your Honor.
11 Mr. Grelick, have you ever heard of an individual by
12 the name of Harry Winston?

13 A Yes.

14 Q Okay. Who is Mr. Winston?

15 A Harry Winston is probably one of the kings of our
16 industry.

17 Q All right.

18 THE COURT: He is one of the what?

19 THE WITNESS: Kings of our industry. He thinks
20 of himself as such.

21
22 BY MR. PARRY:

23 Q Okay. Now, would you, - well, maybe this is superflu-
24 ous, but more or less to lay a foundation, would you
25 consider Mr. Winston to be an expert in the area of

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1 investing in diamonds?

2 A I would consider Mr. Winston one of the smartest market
3 men in the world. He has six different price lists
4 depending on when he walks into what store.

5 Q Okay. Also, how about Mr. Frank Jaeger from New York
6 City, have you ever heard of Mr. Jaeger?

7 A No.

8 MR. RADLER: What was the name?

9
10 BY MR. PARRY:

11 Q Jaeger, J-a-e-g-e-r, of New York City. Now, let me
12 ask you if you would agree with this statement by Mr.
13 Winston - -

14 MR. RADLER: What is the question back?

15 MR. PARRY: What?

16 MR. RADLER: I would like the question back.

17
18 (Last question read.)

19
20 THE COURT: We have not heard the statement.

21 MR. RADLER: All right. Go ahead.

22 THE COURT: It might be a very innocuous
23 statement.

24 MR. RADLER: I doubt it, your Honor.

25 THE COURT: Go ahead, Mr. Parry.

1 BY MR. PARRY:

2 Q For purposes of a financial investment or, I should
3 say a good financial investment, it would be necessary
4 for the purchaser to buy nothing smaller than a one
5 carat diamond with a grade not below that of flawless.
6 Would you agree with that statement?

7 A No.

8 MR. RADLER: All right.

9 MR. PARRY: He doesn't agree with it.

10 THE WITNESS: No.

11 MR. RADLER: I don't care, because I object to
12 their putting in Harry Winston's testi-
13 mony in this fashion. This is the
14 argument we had at the beginning. Even
15 if your Honor were to permit an inde-
16 pendent gemologist, I don't think this
17 is the way to get this testimony in.

18 THE COURT: Of course, this is cross examina-
19 tion of this witness to test his credi-
20 bility and so forth.

21 MR. RADLER: He hasn't shown the statement.
22 There is no text before us. I mean, it
23 is an improper way of doing it.

24 THE COURT: It is an improper way to do it.
25 You ought to show the book or the text

1 so we can certainly see whether or not
2 it is in context or out of context.
3 MR. PARRY: All right.
4 THE COURT: Or what else Mr. Winston said
5 running along with this particular
6 sentence.
7 MR. PARRY: All right.
8 THE COURT: Do you have a text, Mr. Parry?
9 MR. PARRY: No, sir. I hope to have Mr.
10 Winston.
11 THE COURT: You must have culled it from some-
12 where.
13 MR. PARRY: Yes, sir. This is the result of
14 an interview conducted by our agents
15 in New York City of Mr. Winston.
16 MR. RADLER: I know there is no jury, your
17 Honor, but I - -
18 THE COURT: Let me say this, Mr. Parry, his
19 answer is "no" anyway, but I will lend
20 little weight to that because we do not
21 know how the questions were put. We do
22 not know the circumstance of the
23 question. We do not know what else went
24 on.
25 MR. PARRY: I understand that, Judge, and I

1 wasn't trying to put Mr. Winston's
2 testimony in and maybe I did it inartfully,
3 but I was just trying to find out what
4 this man's opinion was, vis-a-vis,
5 Mr. Winston, so it might have been more
6 a case of thinking out loud than any-
7 thing else. Let me ask you if you will
8 agree with some other propositions.

9 THE COURT: This is Parry.

10
11 BY MR. PARRY:

12 Q This is Parry and I don't own any diamonds. Would you
13 agree with the proposition that if a person was to
14 purchase diamonds at slightly below retail, - that
15 is assuming now the retail price is at two hundred to
16 three hundred per cent of the supplier's price, that
17 for purposes of making an investment, that person would
18 be better off putting his money into a bank?

19 A Are you asking for an opinion?

20 Q Yes. Would you agree with that?

21 A Well, let me state this, I don't know exactly what the
22 person, - I have all my money in diamonds so that may
23 be an answer to my opinion, but I would rather, -
24 that is a personal thing.

25 THE COURT: Mr. Parry, I do not know whether

1 this kind of inquiry can help us at
2 all.

3 MR. PARRY:

All right, Judge.

4 THE COURT:

5 I think there are so many factors
6 going into investment in any field that, -
7 how are you going to make that kind of
8 a judgment. You have the investor's own
9 interest. People invest in the stock
10 market all the time in which someone else
11 is saying, well, if they look at it,
12 they would say, "Well, those are cats
13 and dogs", and the other fellow would
14 say, "It is speculative", and somebody
15 else comes along and says, - well, you
16 don't take into account the research
17 in this particular field and on the
18 long term, it is really excellent and
19 the investor looking at it, he may say
20 "Well, I am going to give up scotch,
21 I am going to give up betting on horses,
22 I am going to give up trips to Las Vegas
23 and I want to invest in this particular".
24 It is a matter of choice. I think that
25 we could, in these kind of questions,
go on and on and on and I do not think

1 it would lead to any good result because
2 there are just so many factors that you
3 are leaving out of the question and I
4 cannot see how the witness could
5 possibly answer the question unless he
6 knew a lot more about the individual
7 circumstances, why the person was invest-
8 ing and many other factors. It just
9 sort of is so theoretical that I do not
10 see how it will help us.
11

12 BY MR. PARRY:

13 Q Well, may I have a moment, Judge. Mr. Grelick, can
14 you tell us if there is a distinction between a
15 certificate holder from the Gemological Institute
16 of America and a gemologist; is there a distinction
17 between those two people?

18 A Well, let me put it this way, there shouldn't be, but
19 a certificate from the GIA is held as gospel. I get
20 certificates and I feel that I am then every bit as
21 qualified, in fact, I know I am every bit as qualified
22 as the GIA, but I am still not the GIA.

23 Q Well, all right.

24 A But see, the GIA won't put a price on anything. That's
25 where the loophole begins. The GIA will give you

1 everything, but when it comes to the bottom line,
2 they step out, so somebody could step in there and
3 say "Now I am in demand because I am going to fill
4 out the bottom line".

5 Q Well, the person who has taken the residence course
6 of the GIA and graduated, that person can call himself
7 a gemologist?

8 A If he completed all the courses and passed all the
9 courses.

10 Q How about an individual who has taken a correspondence
11 course from the GIA?

12 A Different degree, same result, still a gemologist.
13 I am not knocking anybody's credibility. I think the
14 best course is being there and having the stones
15 thrown on your desk every day, but that is not to say
16 the correspondence course is bad. The course is
17 different. All I am saying is you can take it by
18 correspondence. It depends on the individual, how
19 intelligent he is, how industrious he is, what he
20 really wants to get out of it. He can get the same
21 thing he would get out of the residency. It is a
22 different diploma, that much, I can tell you.

23 MR. PARRY: Okay. May I have just a moment,
24 your Honor. Mr. Grelick - -

25 THE WITNESS: Yes.

1 MR. PARRY: I don't have any further questions
2 of you. Thank you.
3 THE WITNESS: Thank you.
4 THE COURT: Mr. Radler.
5 MR. RADLER: I don't have any either, your Honor.
6 THE COURT: Allright, Mr. Grelick.
7 THE WITNI Thank you.
8 MR. RADLER: Thank you, Mr. Grelick. If the
9 Court please, we have no further proof
10 in support of our motion and I really
11 am not sure procedurally whether any
12 additional motions, - I don't want to
13 make any additional motions if your
14 Honor doesn't want to hear them. I
15 don't know if the Government has - -
16 THE COURT: What do you suggest, Mr. Parry?
17 MR. PARRY: Well, your Honor, we have Postal
18 Inspector Snyder here and we would put
19 him on the stand and open him up to what-
20 ever questions counsel would care to ask
21 him, and in addition, I would like to
22 have an opportunity to evaluate this last
23 witness' testimony. I am not sure that
24 it will be necessary for us to call a
25 diamond expert in view of his testimony,

1 and one final point on the question of
2 Canadian Law, I think it is going to
3 be necessary for us to obtain the
4 testimony of at least one member of the
5 RCMP as to the purpose of their making
6 the disclosure to us in the first place
7 and that, of course, as I read the
8 Canadian Law, it is going to call for
9 some kind of commission testimony, so
10 that's how I would proceed.

11 THE COURT:

You had Mr. - -

12 MR. RADLER:

Froomken.

13 THE COURT:

Froomken yesterday.

14 MR. PARRY:

Yes.

15 THE COURT:

16 He came here. You also have here,
17 if they were willing to cooperate with
18 you in giving the information, I would
19 think that, - that was the first
20 question I put to you, are we going to
21 have these people come down here willing-
22 ly and participate. This was exactly
23 the thing that I was concerned about in
24 the very beginning. You said, "Judge,
25 this has been done in accordance with
Canadian Law. We have checked this out.

1 We are confident that this will hold
2 up", and if that is the case and this
3 is in support of the Canadian investiga-
4 tion, - in other words, the American
5 warrant and so forth, I cannot see how
6 we should wait for any kind, - this is
7 the thing that the petitioners are
8 entitled to have decided expeditiously.

9 MR. PARRY:

The question, Judge, if I may be
10 heard, is not a matter of whether or not
11 they are willing to cooperate. As I
12 read the Canadian Law, they cannot, in
13 a court proceeding, disclose the exis-
14 tence of these interceptions, unless
15 they are compelled to appear to testify.
16 Now, we have no subpoena power over them,
17 but a commission in Toronto would.

18 THE COURT:

Mr. Parry, you are not listening
19 to what I said to you. You told me that
20 this matter, you cleared it and we were
21 going to have the cooperation of the
22 Canadian authorities immediately. Maybe
23 you need a commission. If so, then it
24 seems to me that it must be immediately
25 prepared, if that is what you are going

1 to do and the testimony immediately
2 made a part of the record here. We will
3 not take that up now because we can
4 carry on other things, but I am just
5 telling you that we are not going to
6 wait here because here we have all these
7 diamonds and all of this money, no
8 question about it. We must decide this
9 matter expeditiously. We have here the
10 testimony of the last witness which, to
11 a certain extent, does not agree with
12 the consultant, whoever the - -

13 MR. RADLER:

Mr. Arend.

14 THE COURT:

15 Mr. Arend, Mr. Arend, so I would
16 think that in addition to Mr. Snyder,
17 we better have Mr. Arend here for
18 examination as to how he made his
19 decisions. I think that is essential.
20 Let us do this; we will take a short
21 recess and then come back and as I under-
22 stand it, you are ready to proceed with - -

23 MR. PARRY:

With Mr. Snyder.

24 THE COURT:

25 With the Postal Inspector. All right.
We will be in recess.

(Recess taken at 11:40 a.m.)

★ ★ ★ ★ ★

1

1 PROCEEDINGS: After recess, 11:48 a.m.
2 APPEARANCES: As before noted.
3
4 THE COURT: We are all assembled. Mr. Parry.
5 MR. PARRY: The Government calls Ronald Snyder

6
7 R O N A L D S N Y D E R (1200 William Street, Buffalo,
8 New York), a witness called by and in behalf of the Government,
9 having been first duly sworn, was examined and testified as
10 follows:

11
12 DIRECT EXAMINATION BY MR. PARRY:

13 Q Mr. Snyder, what is your occupation, please?

14 A I am employed as a United States Postal Inspector.

15 Q How long have you been so employed?

16 A Six years.

17 Q Now, directing your attention to April 5, 1977, did
18 you have occasion on that date to meet with members of
19 the Royal Canadian Mounted Police?

20 A Yes, I did, in Toronto, in their offices.

21 Q And on that occasion, did you meet with one Corporal
22 Ross Kossatz?

23 A Yes, I did.

24 Q And is Corporal Kossatz with the Commercial Crime Section
25 of the RCMP?

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1 A Yes, he is.

2 Q Now, on that occasion, was there a discussion between
3 you and Corporal Kossatz concerning an investigation
4 that had been conducted by the Royal Canadian Mounted
5 Police?

6 A Yes.

7 Q And at that time, did Corporal Kossatz make any request
8 of you in your capacity as a U. S. Postal Inspector?

9 A Yes. They requested - -

10 MR. RADLER: Just a minute. I object to that as
11 hearsay.

12 THE COURT: Overruled.

13
14 BY MR. PARRY:

15 Q You may answer.

16 A I was requested along with another Postal Inspector
17 from Manhattan, New York to give them assistance in an
18 investigation in which they had been conducting in
19 Toronto, Ontario, which also had branch offices or
20 implications in the United States. They wanted our
21 assistance.

22 THE COURT: Under the circumstances, Mr. Parry
23 in listening to this, though, it does
24 not mean that we may not require the
25 testimony of the Canadian Officer here.

1 We will have to listen to the Inspector
2 first to determine whether or not we
3 should have a Canadian Officer here.

4 BY MR. PARRY:

5 Q Now, Mr. Snyder, did you, - when you had this conversa-
6 tion with Corporal Kossatz, was this prior to the
7 time that any disclosures were made to you concerning
8 their investigation?

9 A Yes.

10 Q And did you and the Postal Inspector from Manhattan
11 agree to undertake, to conduct or to obtain search
12 warrants here in the United States and to conduct
13 searches in the United States to assist the Canadian
14 Authorities?

15 A Yes, we did.

16 Q Now, was anything said about the possibility of
17 initiating prosecutions here in the United States?

18 A Yes, it was discussed. They wanted to know if
19 possibility of prosecuting individuals in the United
20 States. We advised them that we would have to under-
21 take our own investigations and possibly these matters
22 would be brought forward to the particular United States
23 Attorneys or Strike Force Attorneys in the States.

24 Q Okay, and for purposes of the record, I also was present
25 at that meeting, is that correct?

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- 1 A Yes, you were.
- 2 Q Now, I show you what has been marked, - oh, after this
- 3 conversation was undertaken, did they, in fact, play
- 4 for you, certain tapes that they had in their possession?
- 5 A Yes, they did.
- 6 Q And did they identify for you the participants in the
- 7 conversations that were recorded on these tapes?
- 8 A Yes, they did.
- 9 Q I show you what has been marked for identification as
- 10 Government's Exhibit Number 1A and I ask you if you
- 11 can identify that document, please?
- 12 A Yes, I can.
- 13 Q What is that?
- 14 A This is an affidavit for a search warrant and the
- 15 search warrant for Merchant Diamond Group, Suite 1629,
- 16 Statler Hilton, which I executed before Judge Curtin,
- 17 and also served upon the officers of Merchant Diamond
- 18 Group on April 14th.
- 19 Q All right. Now, you executed that affidavit on April
- 20 13, is that correct?
- 21 A Yes, the affidavit.
- 22 Q Okay. Showing you what has been marked for identifica-
- 23 tion as Government's Exhibit Number 1B, can you
- 24 identify that document, please?
- 25 A Yes. This is the return of the items which were taken

1 in the search of Merchant Diamond Group officers.

2 The return was made on April 14th. Excuse me, April
3 18th, before Judge Curtin.

4 Q Okay. Now, on the front side of that return, however,
5 can you tell us what that document is?

6 A Yes. This is an affidavit for the search warrant.
7 The search warrant itself, excuse me.

8 Q Okay. Showing you what has been marked for identifica-
9 tion as Government's Exhibit Number 2A, can you identify
10 that document, please?

11 A Government Exhibit 2A is an affidavit for a search
12 warrant for a safe deposit box, Number 123 at Marine
13 Midland Bank, Statler Hilton Office, and this was
14 sworn to before Judge Curtin on April 14th.

15 Q All right, and are you the only affiant on that?

16 A No. Robert S. Brock, U. S. Customs Service is also
17 an affiant with me.

18 Q Okay. Showing you now what has been marked for
19 identification as Government's Exhibit Number 2B, can
20 you identify that document, please?

21 A This is the actual search warrant in respect to
22 Government Exhibit 2A, the return being made before
23 Judge Curtin on April 18th.

24 Q Showing you what has been marked for identification as
25 Government's Exhibit 2A, can you identify that document,

1 please?

2 MR. RADLER: I will be happy to stipulate that
3 those are the exhibits to save some
4 time.

5 THE COURT: We might as well keep the record
6 clear. It will not take long.

7 MR. RADLER: All right, sir.

8 THE WITNESS: This is an application taken before
9 Judge Curtin on April 13, 1977 in respect- -

10 BY MR. PARRY:

11 Q Does that relate to certain mailings?

12 A Yes, to seizing, - searching and seizing the mails
13 of Merchant Diamond Group.

14 Q Okay, and is this the order, Government Exhibit 3B
15 signed by Judge Curtin in respect to that application?

16 A Yes, it is.

17 Q Okay, and showing you Government's Exhibit 4A, can
18 you identify this document, please?

19 A This is an affidavit for a Federal search warrant
20 signed before Judge Heffron, County Court Judge, on
21 April 15th, in respect to the bank accounts of
22 Diamond Merchant Group.

23 Q Okay, and showing you now what has been marked for
24 identification as Government's Exhibit Number 4B, can
25 you identify that document, please?

A Yes. This is the order in respect to Government's
 H. T. Noel & E. F. Knisley

1 Exhibit Number 4A signed by Judge Heffron.

2 MR. PARRY: You may inquire.

3 MR. RADLER: That's it?

4 MR. PARRY: That's it.

5

6 CROSS EXAMINATION BY MR. RADLER:

7 Q Have you got those exhibits up there, Postal Inspector?

8 A Yes.

9 Q Now, you told Mr. Parry that you met in Toronto because
10 you were requested to give the Canadians assistance
11 with respect to a Canadian investigation, right?

12 A That's correct. I received a phone call on March 31st,
13 from John Adamczyk, Immigration and Naturalization
14 Service in which he related to me that the RCMP were
15 interested in meeting with two postal inspectors, one
16 from Buffalo and one from New York.

17 Q Now, you are a United States Postal Inspector and
18 your job is to investigate violations of United States
19 crimes, isn't it?

20 A Yes.

21 Q As a matter of fact, look at 1A. In the third
22 paragraph of that affidavit of yours on Page 1, you
23 say that you commenced an investigation into certain
24 alleged violations of U. S. Crimes, don't you?

25 A I certainly do.

1 Q And as a matter of fact, nowhere in either this
2 affidavit or in the affidavit which is on the top of
3 it, sworn to by you before Judge Curtin, do you even
4 allude to the fact that the purpose of these search
5 warrants is to assist the Canadians in their investi-
6 gation, do you?

7 A To assist and also our violations were taking place at
8 the same time.

9 Q Show me - -

10 THE COURT: Excuse me. The question is a
11 particular one, so if you can address
12 yourself to the particular question.
13 Repeat the question.

14 BY MR. RADLER:

15 Q I would like to ask it in another way. Show me where
16 in that affidavit dated April 13, 1977, or in the
17 cover affidavit sworn to before Judge Curtin, you tell
18 this Court that it is issuing the search warrants to
19 seize the property, money and goods of Merchant Diamond
20 Group to assist the Canadian investigation?

21 A I don't think it says specifically to assist the
22 Canadians.

23 Q It doesn't say anything about issuing the warrants to
24 help the Canadians, does it?

25 A Not to my knowledge, no.

1 Q As a matter of fact, the purpose of the warrants as
2 sworn to by yourself was to get alleged evidence,
3 fruits and instrumentalities of U. S. crimes, wasn't
4 it?

5 A Yes, crimes committed in the United States which were
6 also in conjunction with crimes committed in Canada.

7 Q Where does it say that?

8 A It does not say that in there.

9 Q This affidavit was executed by you on its face to
10 obtain data relative to alleged violations of U. S.
11 crimes, was it not, sir?

12 A Yes.

13 Q Now, the information contained in your affidavit is
14 based entirely, is it not, sir, on either one, informa-
15 tion given to you by the Royal Canadian Mounted Police,
16 correct?

17 A Yes.

18 Q Or recordings of electronic surveillance, namely,
19 tape wiretaps executed by the Canadian Authorities,
20 right?

21 A Yes, and interviews which I conducted with post office
22 personnel at Niagara Square Station.

23 Q Yes, all right, I agree.

24 A Yes.

25 Q With respect to how the goods - -

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1 A Basically, the two major portions were RCMP telling
2 me and also the electronic surveillance.

3 Q To put it another way, and cutting through it all,
4 the first three or four pages of your affidavit
5 relate to alleged misrepresentation by our clients,
6 right?

7 A Made, which were picked up on the electronic surveillance.

8 Q You got that portion of your affidavit, namely, the
9 alleged misrepresentations by our clients by virtue
10 of your conversations with the Mounties or through
11 listening to the taps, right?

12 A Yes.

13 Q You don't know, do you, whether those taps were taken
14 in accordance with either Canadian Law or with United
15 States Law, do you?

16 A I was advised that they were taken in accordance with
17 Canadian Law because I was shown a court order in which
18 they were granted the authorization to place the
19 electronic surveillance on.

20 Q How about in accordance with American Law?

21 A I do not know.

22 Q Do you know whether the taps intercepted, phone
23 conversations held entirely within the United States
24 of America?

25 A I am sorry, I don't understand.

1 Q Do you know how it works up in Toronto with respect
2 to the phone system?

3 A Not really, no.

4 Q There are lines in Toronto which are keyed into calls
5 made entirely within the continental United States,
6 didn't they tell you that?

7 A The phone system as is outlined - -

8 Q Did they not tell you that?

9 THE COURT: Excuse me, Mr. Radler. You have
10 to let the witness answer the question.

11 MR. RADLER: I am sorry.

12 THE COURT: Question, answer. It is not
13 question and interruption. Question,
14 answer. Go ahead.

15
16 BY MR. RADLER:

17 Q Yes, sir. Let me put it again to you so that I can
18 stop and let you answer. The question is did they
19 not tell you in Toronto that the Toronto phone system
20 was set up so that it would pick up calls made entirely
21 within the United States of America?

22 A It is my understanding from talking to the RCMP that
23 phone calls made from the United States to certain
24 numbers listed in Buffalo would automatically ring
25 in Toronto and they would be intercepted in Toronto so

1 that phone call would be made in the United States,
2 but actually be placed and ring to a phone in Toronto.
3 Q All right. I don't want to spend a lot of time with
4 you.
5 A Yes.
6 Q But I just want to refer you to a few other affidavits.
7 All right. Look, for example, at 1B, all right?
8 A Yes.
9 Q That also talks about getting this material for
10 evidence relative to U. S. crimes?
11 A U. S. crimes, correct.
12 Q Nothing about assisting the Canadian investigation,
13 right?
14 A It does not specifically state so.
15 Q All right, similarly to 2A.
16 A 2A, yes.
17 Q And all of the affidavits or search warrants, namely,
18 2B, 3A, 3B, 4A, 4B.
19 A None of those affidavits refer to violations of
20 Canadian Law or assisting in their investigation,
21 that's correct.
22 Q And as a matter of fact, Mr. Snyder, you are presently,
23 are you not, assisting the United States Department
24 of Justice relative to alleged violations of U. S.
25 Law with respect to this defendant?

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1 A Yes, we are. We are proceeding with the investigation
2 here in the United States.

3 Q And in so doing, you have been utilizing the Canadian
4 wiretaps which were disclosed to you in April of 1977,
5 have you not?

6 A Yes.

7 MR. RADLER: May I just have a moment, your
8 Honor. I am sorry. If your Honor
9 please, I have just misplaced a document.
10 I have nothing further, your Honor.

11 THE COURT: Mr. Snyder, Mr. Arend, - is he
12 a resident of Buffalo or Toronto, or
13 where does he reside?

14 THE WITNESS: Mr. Arend has his offices in
15 Toronto, Ontario and has been interviewed
16 in the past by RCMP.

17 THE COURT: I see. Is he available to testify?

18 THE WITNESS: We attempted to interview Mr. Arend
19 on Friday of last week and due to a
20 conflict in schedule, were not able to
21 contact him. It is my understanding that
22 RCMP was to interview him yesterday
23 afternoon to see if he would be available
24 to travel to the United States. We
25 have contacted other experts in the

1 field relative to coming to Buffalo and

2 - -

3 THE COURT:

Now - -

4 THE WITNESS:

Yes, sir.

5 THE COURT:

6 On this score, the representation
7 was made to you by the RCMP that, -
8 I am looking at Page 3 of your affidavit.

9 THE WITNESS:

Yes, your Honor.

10 THE COURT:

11 "The RCMP advises that it has
12 contacted numerous experts in gemology"
13 and so forth, "who state no retail
14 market exists for the resale of
15 diamonds". Do you know the names of any
16 of these experts?

17 THE WITNESS:

18 Yes, I do, your Honor. They
19 contacted two importers by the name of
20 Mark Gross and Jacob Nunes.

21 THE COURT:

N-u-n-e-s?

22 THE WITNESS:

23 Yes, your Honor, and I am not sure
24 if they are Toronto residents. I know
25 they are Canadians.

THE COURT:

They are Canadians?

THE WITNESS:

And they specifically told the
Mounties that there was no market for
investment diamonds in respect to the

1 diamonds which Merchant Diamond Group
2 is selling as investments.

3 THE COURT:

Did they have an opportunity to
4 look at, or were they given the details
5 about what diamonds were involved?

6 THE WITNESS:

I really don't know the specifics
7 of that. However, they did have another
8 expert by the name of James Brown who is
9 a gemologist in Calgary, Canada, and
10 they told me he apparently appraised
11 approximately fifty of the diamonds that
12 investors had bought from Diamond
13 Merchant Group and he appraised them at
14 approximately half the value, as did Mr.
15 Caldera.

16 THE COURT:

Page 2 of your affidavit, at the
17 very top, you talk about, - starting at
18 Page 1, "The president of this company
19 is one Gerald Doren. Other principals
20 and participants in the company are
21 Allen Lindzon, Stanley Harold Bader
22 and Harold Eric Smith". Can you explain
23 the connection that each one of these
24 individuals has with the corporation
25 involved here?

1 THE WITNESS:

2 In the interviews with the Mounties,
3 they were extensive, approximately
4 sixteen hours on the 7th of April, I
5 questioned them in respect to who were
6 the founders and principals in the
7 company and they gave me those particular
8 names, Gerald Doren as being the
9 principal and founder, both in Canada
10 and then with the information we found
11 in the U. S. as to the incorporated
group.

12 THE COURT:

13 But you say they are participants.
14 When you make a judgment that Lindzon,
15 Bader and Smith are participants, you
16 must have had some information about
17 what they did. What does Lindzon do,
or what did he do?

18 THE WITNESS:

19 Allen Lindzon is a salesman and
20 he was, - I am not sure if he had a
21 corporate title in the company, but he
22 was one of the original founders of the
23 company and that his name appears on
24 the original documents in limiting the
25 company in Canada, as does Bader and
Smith.

1 THE COURT: All right.

2 THE WITNESS: And Lindzon was picked up on the

3 electronic surveillance.

4 THE COURT: Did Bader participate in the sales?

5 THE WITNESS: At one time he did and RCMP also

6 advised me that he is presently running

7 another diamond investment group and I

8 believe the name is North American and

9 they are located in Florida at the

10 present time.

11 THE COURT: What about Smith? At the time, -

12 what I am looking at is the time you

13 signed the affidavit. What did you know

14 about Smith then and Bader and Lindzon

15 then?

16 THE WITNESS: At the time I knew that they were

17 originators of the company on paper in

18 Canada and that Lindzon and Bader, I

19 believe had been picked up on the wire

20 and as to the direct relationship of

21 Smith, I wasn't sure. I was advised

22 that he also had expanded into a new

23 diamond investment company.

24 THE COURT: You say they were convicted in

25 May of 1976 of conspiracy to defraud and

1 so forth.

2 THE WITNESS:

I saw the certified copies of the
conviction in the RCMP hands.

4 THE COURT:

What was the sentence of the Court,
do you know?

6 THE WITNESS:

I believe I have that in my notes.
I believe all three individuals were
fined. I don't believe there was any
incarceration time.

10 THE COURT:

Was there any probation, any terms
of probation, do you know?

12 THE WITNESS:

I am not certain, sir.

14 THE COURT:

The officers that you dealt with
when you talk about RCMP advises, you
are, am I correct in assuming that you
are referring to Corporal Ross Kossatz?
Were there others? Then you later on
say "RCMP advises". Is this Corporal
Kossatz, or were there other officers?

20 THE WITNESS:

Your Honor, the meetings involved
approximately six RCMP. Corporal Ross
Kossatz was the individual who requested
our assistance from the United States.
There were others, including the head
of the Commercial Crimes Unit.

1 THE COURT:

And his name - -

2 THE WITNESS:

I don't recall his name, specifically,
3 but individuals I specifically dealt
4 with were John Rowland, Gene Lewis.
5 Those are the two I have had the most
6 conversations with.

7 THE COURT:

I see. Do you know who, - was it
8 Kossatz you talk on Page 2 that the
9 RCMP intercepted in excess of one
10 thousand telephone calls. Do you know
11 what officers were charged that did this
12 and carried on this investigation?

13 THE WITNESS:

Yes, your Honor. There was two
14 electronic surveillances being done at
15 the same time, one for another London
16 House, just like Diamond Investment
17 Group with offices in Toronto and New
18 York City and then Merchant Diamond
19 Group with offices in Toronto and
20 Buffalo. I specifically spoke with
21 John Rowland in respect to Merchant
22 Diamond Group, John Rowland and Ross
23 Kossatz.

24 THE COURT:

I see. They were familiar with
25 the one thousand phone conversations

1 which you say are involved with Merchant
2 Diamonds?

3 THE WITNESS:

Yes, your Honor.

4 THE COURT:

5 You have heard the testimony here
6 from the various witnesses in court.
7 It would appear at this stage that there
8 are some discrepancies. For example,
9 we heard the testimony of the witness
10 last week about the buy back procedures
11 and we have charts here and also
12 various invoices and so forth which
13 seem to indicate that there have been a
14 number of instances where the Merchant
15 Diamonds did buy back at either the
16 prevailing retail price or a little bit
17 in excess or on some occasions, perhaps,
18 a little lower. You say in your affi-
19 davit, "Merchant Limited has bought back
20 diamonds on only ten occasions since
21 electronic surveillance was initiated
22 on February 2, 1977". Can you explain
23 the difference of that statement there
24 with the information we have heard here
25 in court?

THE WITNESS:

By all means, your Honor. The

1 The electronic surveillance in Canada
2 I believe is a little bit different than
3 those required in the United States.
4 I believe, in the United States, the
5 wires must be monitored on a twenty-
6 four hour basis. In Canada, that is not
7 so. The Canadians, and specifically
8 John Rowland, after reviewing the tapes,
9 notified me that he is only aware of
10 ten buy backs and after I talked to him,
11 in regard to defense counsel producing,
12 I believe, forty-two buy backs in the
13 period of time he was not aware of that
14 and, in fact, he is still only aware
15 today of the ten. Apparently, RCMP
16 did miss the buy back records that Terry
17 Hiltz produced here in court. They were
18 only aware of ten.

19 THE COURT:

If the negotiations were carried
on my letter, he would not be aware of
that at the time of the tap.

22 THE WITNESS:

That is correct. Some of the buy
backs, and I took the liberty of looking
at the chart, some of the buy backs were
actually for the diamonds sold at

1 Merchant Diamond Groups headquarters in
2 Hollywood, Florida and the Mounties
3 would not be aware of those at all and
4 basically, the affidavit that I signed
5 before your Honor is correct on the fact
6 that they only knew of the ten. They
7 still only know of the ten, other than
8 notifying me that defense counsel here
9 have more.

10 THE COURT:

11 You explain in your affidavit the
12 number of instances. We do have, you
13 say here "The RCMP advises a complete
14 review", - this is the bottom of Page 3,
15 "of the aforementioned court authorized
16 electronic interceptions discloses that
17 in the vast majority of instances where
18 customers have sought a buy back of their
19 diamonds, Merchant, Limited has failed
20 to do so". Evidently, either the Corporal
21 or the other officer gave you particular
22 information before you came to that
23 conclusion. What did they tell you about
24 the customers seeking buy back arrangement
25 and Merchant refusing to go ahead with
it?

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1 THE WITNESS:

2 I heard specific tapes in which
3 various customers called to talk to a
4 specific salesman in regard to buying
5 back and Terry Hiltz, who is Mrs.
6 Dinino, appeared in this courtroom, one
7 and the same, told the people that the
8 salesmen weren't in the office at that
9 particular time when, in fact, the
10 Mounties have advised me that that
11 particular salesman was in. In respect
12 to the continuation of the paragraph
13 which you just read to me, in respect
14 to the conversation with Mr. Doren and
15 an Attorney Tuse, who represents a
16 Dr. Gray out in Calgary, Mr. Doren
17 states to him specifically, to Mr. Tuse,
18 that if Mr. Gray wants to sell his
19 diamonds back, Doren may buy them back,
20 but if he does not buy them back, Mr.
21 Gray will be forced to dump them on the
22 wholesale market. He would recoup one
23 fourth of his investment and where would
24 that lead him and Mr. Doren continues
25 to state that there was no breach of
contract, "We had no contract in regard

1

to a buy back".

2

MR. RADLER:

3

If your Honor please, I just,

4

respectfully, for the record, - I

5

recognize that the Court is questioning,

6

but I do have to object, because I don't

7

think it is proper for this witness to

be testifying.

8

THE COURT:

Mr. Radler, in these proceedings,

9

we may consider hearsay.

10

MR. RADLER:

I understand that, but I recognize

11

the Court's position. I am simply

12

stating my position for the record and

13

I want the record to note my objection.

14

THE COURT:

Surely. I want to get back again

15

to you say, "vast majority of instances".

16

Is this simply on your judgment that on

17

a large number of occasions, that Terry

18

Hiltz told the customers on the phone

19

that the salesman simply was not there?

20

THE WITNESS:

Yes, your Honor. I only heard

21

between twenty-five and thirty tapes,

22

and there are over one thousand phone

23

calls that were monitored.

24

THE COURT:

I realize that, but you then relied

25

also upon the information you received

1 from the Canadian officers. Did they
2 tell you, did they give you additional
3 information about what salesman told
4 the customers about buying back?

5 THE WITNESS:

Yes. In fact, I heard specific
6 electronic tapes of salesmen's discussions
7 with potential investors.

8 THE COURT:

All right. What was said?

9 THE WITNESS:

There was no question that in some
10 of the instances, the salesman definitely
11 stated, "We will buy your diamonds back",
12 quote, unquote, and other instances, the
13 salesman stated, "We will assist you in
14 reselling the diamonds". It varies.
15 We did receive a copy of a transcript on
16 our first visit to Toronto, a transcrip-
17 tion of a salesman and an opener and
18 that individual definitely states "buy
19 back". We have that transcript here.

20 THE COURT:

I am not referring so much to what
21 you heard. I am referring to the
22 information you received from the
23 Canadian officers about what they heard
24 because you see, you say "The RCMP
25 advises that in the vast majority of

1

instances where customers have sought a buy back of the diamonds, Merchant has failed to do so".

2

3

4

THE WITNESS:

Yes.

5

THE COURT:

What did the Canadian Officers tell you about what they heard, so you made a judgment that it was in the vast majority of instances?

6

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THE WITNESS:

They told me that there were only ten known occasions on which buy backs were made to them and that many calls were made, but only ten buy backs were actually made by Merchant Diamond Group, so a majority of the people were put off and specifically, I referred earlier to the call of Attorney Tuse, but they told me in the vast majority of instances, they did not buy back.

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THE COURT:

It is still not clear to me because you told me of the put off and that was to simply say "The salesman is not here". That may be a selling technique, but it is a final judgment. It is part of the, let's say, the haggling process. What I am trying to find out is whether

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1 or not they listened to conversations
2 and they told you "We listened to a
3 number of conversations where the sales-
4 man told the person, 'You have to do it
5 on your own'", you know, "Write us a
6 letter and we have to take it up with
7 our boss", or "It really is not in the
8 contract, if you look at the fine print",
9 and things of that nature.

10 THE WITNESS:

11 Well, the specific phone call Doren
12 to Tuse and then the put offs, they
13 stated that most of the buy backs, the
14 majority of instances, the people were
15 put off by being told that particular
16 salesman wasn't in at that particular
17 time, when, in fact, the Mounties knew
18 he was in the office at the time the
19 phone call was made and then they had
20 specific electronic surveillance of
21 Mr. Doren talking to Terry Hiltz and
22 other individuals in which he relates
23 that only seven per cent buy backs are
24 acceptable, "We just won't accept any
25 more, not in Canada. I won't buy back
anything in Canada. However, I will

1 buy back seven per cent in Toronto".
2 On February 22 of '77, Mr. Doren was
3 electronically surveilled, taped, in
4 which he talked to Terry Hiltz in
5 Toronto, in which he advises her, "We
6 will not accept any Canadian buy backs
7 right now", and then he was limiting
8 the buy backs in the U. S. to seven
9 per cent.

10 THE COURT: Mr. Parry, anything further?

11 MR. PARRY: No, Judge. I don't have anymore
12 questions.

13 THE COURT: Mr. Radler.

14
15 CROSS EXAMINATION BY MR. RADLER: (Resumed)

16 Q I have a couple of questions, not too many. You don't
17 know whether, when Mr. Lindzon and Mr. Bader were
18 electronically intercepted, they were dealing with
19 United States transactions or not, do you?

20 A I know of one call from Mr. Doren, who was in Florida,
21 to Mr. Lindzon in Toronto.

22 Q I'm talking about dealing with U. S. customers.

23 A I can't specifically recall if they were either U. S.
24 or Canadian customers.

25 Q As a matter of fact, on April 11th or 13th, neither

1 Bader, - when you made this affidavit, nor Smith, was
2 affiliated with this company, were they?

3 A Smith was arrested in Merchant Diamond Group offices.

4 Q That may be, but he was not affiliated with this company,
5 was he?

6 A To my knowledge, he is still affiliated with them.

7 Q Well, don't you know that he was and is employed by
8 a competitor of Merchant Diamond Group; don't you know
9 that?

10 A That is questionable.

11 Q How about Mr. Bader, he has been out of the employ
12 or association with this company for over a year before
13 they even started in New York, hasn't he?

14 A I don't really know. I don't know when he worked for
15 them, if he did.

16 Q The only other question I have with respect to this
17 alleged seven per cent policy, you don't know whether
18 more or less than seven per cent of the customers asked
19 to buy back in the United States, do you?

20 A No, I do not know.

21 MR. PARRY: May I have just a moment, Judge?

22 MR. RADLER: I don't have anything else.

23 THE COURT: Please?

24 MR. PARRY: May I have just a moment?

25 THE COURT: I have to step off in a minute.

1 Do you have some further witnesses after
2 Mr. Snyder?

3 MR. PARRY:

No, I don't, your Honor. I now
4 reached the point of obtaining my
5 Canadian witnesses and I am attempting
6 to deal with that problem as best I can.

7 THE COURT:

I had today, - this was the hearing
8 day. Today is the day that we said we
9 will have hearing today and the earlier
10 proceedings here indicated that we
11 should go ahead promptly on this because
12 of certainly the amount involved. Let
13 us do this; we will reconvene at 2:00
14 and at that time, I will have a chance
15 to think about this over the noon hour
16 and I want to hear your suggestions about
17 what we should do next. Also, if the
18 witnesses are not here. I think we
19 certainly are entitled, - we must have
20 an explanation of why they cannot be
21 here. We will be in recess until 2:00.

22
23 (Recess taken at 12:27 p.m.)
24

25 * * * * *

1

1 PROCEEDINGS:

After recess, 2:05 p.m.

2

3 THE COURT:

We are back in session in the
United States against Merchant Diamond
Group.

5

6 MR. PARRY:

Your Honor, I spent the last hour
trying to contact the Crown Attorney
in Toronto concerning the possibility
of taking evidence from at least one
member of the RCMP who had participated
in this investigation by way of affidavit
if for no other reason than to set forth
or lay the factual foundation for the
hypothetical question I posed to Mr.
Froomken yesterday. I was unable to get
a hold of the Crown Attorney but I have
a call in to him. Also, I have been
advised by Corporal Kossatz who
interviewed Mr. Arend that Mr. Arend
will be available tomorrow if you would
like to hear his testimony then and I
must say this, I was under the impression
or had been led to believe that Merchant
Diamond Group was going to have a longer
presentation today than in fact they did
have.

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1 MR. RADLER:

I said a couple of hours.

2 MR. PARRY:

Okay. Well, I was expecting several
3 hours and I thought Inspector Snyder
4 would fill out the rest of the day. I
5 had no idea he would be this quick.

6 THE COURT:

I thought Inspector Snyder would
7 be longer. It is a thing, without
8 beating a dead horse, I think certainly
9 this hearing must go ahead just as
10 expeditiously as possible and we also
11 should bring it, - in other words, we
12 should bring it to a conclusion. We
13 should have, I would think here, certainly
14 Mr. Arend so his representations which
15 were made to Mr. Snyder, may be tested.
16 It also occurs to me that we ought to
17 have the testimony of the officer or
18 officers who related to Mr. Snyder their
19 conclusions about what the wire taps
20 revealed because you get these represen-
21 tations made by Mr. Snyder. He says
22 "In the vast majority of instances where
23 customers have sought a buy-back has
24 failed to do so". When we consider his
25 testimony here that seems to be where

1 the, - this lady who testified before
2 simply put, at the best for the Government
3 it was a put off and it really was not
4 a refusal and there is nothing before
5 us to indicate there was any follow
6 through on the part of a customer as
7 far as trying to buy it back. We have
8 the chart here, these invoices which
9 have been in evidence which certainly
10 contradict the representation made that
11 Merchant has bought back diamonds on
12 only ten occasions. We have a number of
13 other occasions. Without detailing all
14 of the things here, Mr. Radler, what do
15 you say about this?

16 MR. RADLER:

17 Well, I am very concerned, as I
18 think your Honor is aware of, of the
19 time frame because the Government with-
20 out arrest or indictment has put these
21 people out of business, as I say, without
22 spending any money other than what has
23 been going on here. The show cause order
24 has been in effect for two weeks and at
25 our first argument it was made very clear
by the Court that the Government would

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13 THE COURT:

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16 MR. RADLER:

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be expected to produce Mr. Arend and Corporal Kossatz and others and I frankly am at a loss to understand why they have not been here before. I, of course, - I feel that we have demonstrated that the affidavit does contain insufficiencies if not misrepresentations apart from the whole question of Canadian law and I feel that we should get our diamonds and our money back. I should say to your Honor that I have been approached by the Government with respect - -

I hate to be quibbling about this but it is not quite two weeks. It will be two weeks on Friday.

Well, all right. I am sorry. I didn't mean to overstate it. I apologize. Whatever it is, it has been some period of time. It wasn't yesterday that we were aware of this. The Government has indicated to me that there may be some way they can work it out to give us back our money. I don't know how they propose to do that. I am just concerned with further delay here.

5

1 THE COURT:

2 I am too, Mr. Radler. We will set
3 this for tomorrow and we will consider
4 whatever evidence the Government has
5 tomorrow. Mr. Parry, I want you to
6 understand clearly that if we do not
7 have definite answers to the questions,
8 I know, and certainly I do all the time,
9 that you are entitled to consider hearsay
10 and the Court will consider hearsay but
11 now that we have had the explanation by
12 the Inspector of what his understanding
13 was it does not square up in my mind to
14 the general representation. It seems to
15 me there are a number of holes in the
16 explanations made so that I think that
17 you have to, - tomorrow will be the day
18 and after that I do not think there should
19 be any further delay.

20 MR. PARRY:

21 All right. Well in regard to
22 obtaining - -

23 THE COURT:

24 I want you to know we cannot be in
25 session on Thursday and it will be most
difficult to have a session on Friday so
I think that if you want to do it any
further it should be tomorrow. Otherwise

6

1 I think that the petitioners have a
2 very excellent argument here that they
3 are entitled to relief because relief
4 given two or three months from now will
5 not solve the problem. The other thing
6 is that these search warrants were
7 signed back in April. No indictments
8 have been returned, - April 13th. That
9 is certainly over two months so that I
10 know that the investigation is far
11 reaching but I think it is evident that
12 the Government has to make choices on
13 what they want to do here and when they
14 seize so much money and so much property
15 that they have to do something else. I
16 mean they have to get at it and find out
17 whether it is up or down or do something
18 or do not do something.

19 MR. PARRY:

20 Well, if I can just state for the
21 record, we have been vigorously pursuing
22 the investigation. I don't want to let
23 this go by without making that represen-
24 tation. This is not a situation where
25 we went out and seized a bunch of property
and we have done nothing since. We have

7

1 been vigorously investigating this matter
2 and as your Honor has indicated it has
3 taken us far afield into many of these
4 diamond houses but we are pursuing the
5 investigation.

6 THE COURT:

We will recess until tomorrow. We
7 have the argument, Mr. Hellerer, in the
8 Emprise matter at what time, 9:30?

9 MR. HELLERER:

I believe so, your Honor. I am not
10 sure.

11 THE COURT:

At 9:30 and I suppose we could
12 spend an hour or more on that, could we
13 not?

14 MR. HELLERER:

Probably.

15 THE COURT:

We will resume at 11:00.

16 MR. RADLER:

Whatever your Honor says.

17 MR. PARRY:

That will be fine.

18 MR. RADLER:

11:00 o'clock tomorrow, all right,
19 sir. Thank you.

20
21 (Recess taken at 2:16 p.m.)

22
23 * * * * *

1 PROCEEDINGS: June 22, 1977, 2:00 p.m.

2 APPEARANCES: As before noted.

3
4 THE COURT: Mr. Perry.

5 MR. PERRY: Good afternoon, Judge. We are here
6 to continue in the hearing of United
7 States vs. Merchant Diamond Group. At
8 this time, the Government would call Mr.
9 Robert Arend. Mr. Arend.

10
11 R O B E R T A R E N D (866 Duplex Avenue, Toronto,
12 Ontario, Canada), a witness called by and in behalf of the
13 Government, having been first duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION BY MR. PERRY:

17 Q You may be seated, yes. Mr. Arend, what is your
18 occupation, please?

19 A I am a gemologist.

20 Q And how long have you been a gemologist?

21 A I have been a gemologist for just over twenty years.

22 Q And would you tell us, please, what a gemologist does?

23 A A gemologist is someone who has studied the science
24 of gem stones, is familiar with prices and price
25 fluctuations and in a normal course of a day, puts

1 values or appraisals on jewelry.

2 Q Now, have you had occasion as a gemologist over the
3 last twenty years to purchase diamonds or precious
4 stones for yourself and for others?

5 A I do this, - well, regularly and for the last ten
6 years, I have been going to Europe in particular
7 to Antwerp to buy diamonds, yes.

8 Q And these are bulk purchases that you make?

9 A These are large wholesale type of purchases direct from
10 the diamond bourse which is the closest source to the
11 uncut diamonds as you can come to. They are polished
12 diamonds; don't get me wrong, they are polished diamonds
13 but they are direct from the cutter to the consumer.

14 Q Now, as a gemologist, have you received any formal
15 training in the field?

16 A Yes. I took some courses through an English gemological
17 association and became a fellow of the Gemological
18 Association of Great Britain in 1957 and for the last
19 twenty years, have taught the same course in Canada
20 at the University and with the exception of three
21 gemologists, all other gemologists in Canada, about
22 forty or fifty of them, are all students of mine and
23 furthermore, I am also a qualified, as they call it,
24 gemologist from the Gemological Institute of America.
25 I have done their exams and I am, at the present time,

1 the only Canadian to hold both the American and
2 the International recognized English degree.

3 Q Now, have you also testified as an expert witness in
4 Canadian courts?

5 A Many times, yes.

6 Q This would be as an expert in gemology?

7 A As an expert in the field of gemology, gem stones in
8 particular.

9 Q Mr. Arend, when you arrived here today, I asked you,
10 did I not, to examine Government's Exhibit 1A which
11 is the affidavit of Postal Inspector Ronald Schneider,
12 is that correct?

13 A That's correct.

14 Q Now, before we got to the affidavit itself, I would
15 like if you will to, - for you to explain for all of
16 us so that we will have some background here, the
17 relationship between the price of diamonds and the
18 various international currencies?

19 A Well, I certainly will try to do that with a relatively
20 easy example. Last November when I went to Europe to
21 buy on one of the many buying trips I do, I was getting
22 forty Belgium francs for one dollar, for one U. S.
23 dollar. Today, - last week when I was there on Tuesday,
24 as a matter of fact, I was offered 35.90 Belgium francs
25 for one dollar. That means a decrease of the U. S.

1 dollar power of ten per cent and furthermore, as to
2 Canadian prices, since Levesque came in Quebec sometime
3 last fall, the Canadian dollar went down between five
4 and six per cent. As a matter of fact, right now, I
5 think it is 6.35 per cent on the dollar and last
6 November when I bought some U. S. dollars in Canada,
7 I was paying ninety-eight and a half cents for a U. S.
8 dollar, so in theory, to buy diamonds of equivalent
9 size and value, the rate of exchange alone since last
10 November and today is seventeen per cent appreciation
11 or a downward trend in the dollar or you have to pay
12 seventeen per cent more for a stone and furthermore,
13 there was a small increase, - a relatively large
14 increase, I should say, in the diamond prices this past
15 February of about eight, nine per cent in the rough,
16 so today, smaller diamonds or certain diamonds, - I
17 should be a little more explicit, are about twenty-five
18 per cent more costly than the same diamond was, say,
19 last September of October. On the other hand, some
20 stones, - it doesn't hold true for all diamonds, some
21 stones have gone up more than others. I can give you
22 an example where diamonds, over the last three years
23 have gone down in value which is in the case of a real
24 fine gem quality diamond which was seventy-three,
25 seventy-four, worth about \$7,500 and today could be

1 purchased for sixty-five to \$7,000, so it has gone down
2 nearly a thousand dollars rather than go up, so there
3 are occasions where diamonds have actually gone down
4 rather than up, but on the average, over the last
5 ten years, and this is drawn from ten years of experience,
6 the average price of diamonds has gone up ten per cent
7 a year, between eight and ten and the average price of
8 rough diamonds over the last ten years, and you can
9 check these prices with other people, has also gone up
10 between eight and nine or ten per cent a year. That is
11 a ratio.

12 Q Now, I would like you to go to Government's Exhibit 1A
13 which is the affidavit and I direct your attention now
14 to Page 2 and at the bottom of that page is the first
15 of the alleged misrepresentations made by the salesman
16 for Merchant Diamond Group and the statement is,
17 "The diamonds being offered to the customer will, based
18 on past performance, appreciate in value at the rate
19 of 33 per cent to 60 per cent a year", and following
20 that is this statement: "The RCMP has been advised by
21 Mr. Robert Arend, a member of the Gemological Institute
22 of America and a recognized expert in the field of
23 gemology that the value of diamonds as a commodity has
24 had a maximum rate of appreciation in recent years of
25 between approximately 8 per cent to 9 per cent a year.

1 Moreover, this rate of appreciation apprised to raw,
2 uncut diamonds which appreciate in value at a faster
3 rate than the cut and polished diamonds being offered
4 for sale by Merchant Limited". Now, I understand in
5 reviewing this with you that you take issue with the
6 last clause in that last sentence, but let's go to the
7 portion that refers to the increase or the increase in
8 value of diamonds as a commodity has had a maximum
9 rate of appreciation in recent years of approximately
10 8 per cent to nine per cent a year. Do you agree with
11 that statement?

12 A That is the increase in rough diamonds. That is
13 unforeseen from the fact that the U. S. dollar - -

14 MR. RADLER: I am sorry.

15 THE WITNESS: It has nothing to do with the fact
16 that the U. S. dollar has gone down in
17 value and the Canadian dollar has come
18 down another seven per cent. In other
19 words, if you add 8 or 9 per cent to the
20 10 per cent that the U. S. dollar went
21 down in buying power in Belgium and the
22 7 per cent the Canadian dollar went down,
23 you get for this particular year, or
24 rather, for February and March an
25 increase as opposed to last year in this

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1 case of twenty-five per cent in the
2 cost of the diamond, but not necessarily
3 the value. It is the cost here in
4 Canada. Now we are in the States so
5 you can take seven per cent off that
6 because the U. S. dollars are U. S.
7 dollars. They are not Canadian dollars.

8 MR. RADLER:

Your Honor, the only purpose in
9 my rising, I just didn't hear the entire
10 answer. Were you saying that the first
11 sentence referred to rough diamonds?
12 That is all I want to know. I thought
13 I heard you say that.

14 THE WITNESS:

The cost in rise of rough diamonds
15 has been between 3 and 9 per cent a
16 year, yes.

17 MR. RADLER:

That is all I wanted.

18
19 BY MR. PERRY:

20 Q Now, you say, however, that the, - that that rate
21 of appreciation applies to rough or uncut diamonds,
22 correct?

23 A Yes, but that is directly related to polished diamonds
24 because if rough goes up, polished will go up as well,
25 except that in the case of polished, the fluctuation

1 in prices so in world currency markets has something
2 more to do with the rate of exchange. For example,
3 in Italy, in the past year, diamonds have gone up
4 fifty per cent because their money has devalued by
5 fifty per cent, so it is kind of an unfair thing.
6 Rough diamonds went up 8 to 9 per cent and if our
7 dollar remained the same as the U. S. dollar, then the
8 only difference would have been the 10 per cent of the
9 U. S. dollar devaluated as opposed to European currencies

10 Q All right. Now, the last part of the last sentence in
11 that paragraph is a statement that raw uncut diamonds
12 appreciate in value at a faster rate than the cut and
13 polished diamonds being offered for sale by Merchant
14 Limited.

15 A No. It should be the other way around. Someone wrote
16 this wrong. It should have been the rough diamonds
17 are 8 to 9 per cent and that the cut diamonds go up
18 at least that much, but also, most likely, a little
19 more, depending on the currency exchange; like in
20 Canada, we lost seven cents on the dollar and obviously,
21 we have to charge seven cents more.

22 Q All right. Now, these figures of 8 to 9 per cent, are
23 they based on the Debeers figures?

24 A I would say they are based on the Debeers average raises
25 of rough diamonds over the last ten years. Now, some

1 years their prices only went up four or five per cent
2 and other years, they have gone up as much as thirteen
3 or fourteen per cent, but over the last ten years, not
4 only from my experience, but many, many others today
5 the price of the stone as opposed to ten years ago
6 which was when I really started my own business has
7 gone up a hundred per cent. In other words, an average
8 of ten per cent a year for the average diamond. That
9 doesn't necessarily mean that some diamonds haven't
10 gone up far more, like really fine carat stones and
11 other diamonds like little single cuts which are used
12 as false stones on rings have really only gone up
13 about sixty per cent over the last twenty years which
14 is two and a half per cent and they are also diamonds
15 so to say that all diamonds have gone up thirty-three
16 to sixty per cent per year is ridiculous. An average
17 diamond has gone up ten per cent a year which, to most
18 people, is the rate of inflation that money has gone
19 up and, you know, if you had diamonds instead of money,
20 you keep your value as a hedge against inflation, but
21 that's about it.

22 Q But it is a hedge against inflation at the rate of
23 ten per cent a year?

24 A That's right, because money goes down ten per cent
25 with the last ten years and, - well, diamonds went up

1 ten per cent a year just to keep even with the
2 inflation. That's about right.

3 Q Now, we have had here in this hearing a presentation
4 of Defendant's Exhibit Number 4 which indicates that
5 the prices paid by the Merchant Diamond Group per
6 carat for various size stones from the period of
7 September, 1976 into the period in some instances of
8 March, 1977, have gone up by various percentages,
9 32.8 per cent for twenty point stones; 25.6 per cent
10 for twenty-five point stones and so on. Now, you have
11 had an opportunity, have you not, to examine copies
12 of this chart previous to coming down here today, is
13 that correct?

14 A Yes, I have seen them.

15 Q Now, can you reconcile the increases indicated on the
16 percentage increases indicated on this chart, Defendant's
17 Number 4 with your statement that the average rate of
18 increase per year over the last ten years in the value
19 of diamonds has been at about ten per cent?

20 A Yes. Like I mentioned before, the carat stones
21 supposedly have only gone up 15.1 per cent. I think
22 they are a little low on that because as I have explained,
23 the rate of exchange right now is a little better than
24 ten per cent for U. S. and the Belgium franc, and I
25 assume those are Canadian prices and our money, roughly

1 five to six per cent so they should have gone up
2 fifteen per cent plus the rough increase, so I think
3 in the case of carat stones, they are a little low.
4 And it could have been far closer to twenty-two,
5 twenty-three per cent. In the case of all the other
6 ones, 25.6 for quarters sounds relatively fair because,
7 like I said, it is about ten per cent a year plus
8 sixteen per cent on the money is twenty-six per cent.
9 In certain instances, the half carats are a little
10 high, but it depends on where one buys. It is possible.
11 They are certainly not far out.

12 Q Now, you are talking in terms now of cost?

13 A I am talking in terms of cost in Canada as opposed to
14 last September to this March or even to today where
15 the Canadian-U.S. exchange is still there, the loss
16 of Canadian dollars is, and the ten per cent U.S.
17 dollar loss as opposed to Belgium francs so the cost
18 of the diamonds has increased by at least seventeen
19 per cent on currency valuation alone, plus the ten
20 per cent, so seventeen and ten is twenty-seven. Well,
21 that's thirty-two there and thirty-three. If you add
22 those all up, I am quite sure if you add those three
23 prices up and divide them by six, you will get an
24 average of about twenty-five per cent which I agree
25 with.

1 Q That is in terms of cost, but we are talking now about
2 in terms of appreciation in value of the diamonds and
3 do these figures in any way alter your conclusion that
4 once you eliminate the exchange of currency factor
5 in computing these costs, that the fact the value of
6 diamonds on the average has been going up about ten
7 per cent over the past ten years?

8 A No, it doesn't alter it at all because the majority of
9 people would agree with me, except that it's like day
10 to day. If tomorrow the Canadian dollar would be back
11 on par with the U.S. dollar, which I hope there is a
12 possibility it will happen, then in theory, the price
13 will go down five, six per cent and when the U.S.
14 dollar gets a little stronger and there are certain
15 indications that it will, then that ten per cent
16 exchange with European currency will bring the price
17 down again and if you look at the price list here,
18 the carat one, there is one there in December, January
19 and February where the carat price, the stone, the
20 cost of stones actually went down according to that
21 chart so if it goes down three months in a row, I can
22 hardly see how you can state, you know, in the last
23 couple of months, costs have increased by thirty-three
24 to sixty per cent.

25 Q Okay. Well now, let's go to Page 3, Paragraph 2.

1 You have also examined that paragraph, is that
2 correct?

3 A Yes, I have.

4 Q All right. Now, the statement begins, "There is a
5 ready market for the resale of diamonds to that the
6 customer may liquidate his diamond holdings at will",
7 and then that is followed by, "The RCMP advises it
8 has contacted numerous experts in gemology, diamond
9 importing and related fields and that according to
10 these experts, no retail market exists for the resale
11 of diamonds and further, that the only ready market
12 for diamonds is at the wholesale level. As stated
13 above, Merchant Limited sells cut and polished
14 diamonds to its customers at retail prices. These
15 retail prices vary from two hundred per cent to three
16 hundred per cent of the wholesale price paid by
17 Merchant Limited. Accordingly, unless a customer is
18 willing to sell his diamonds on the wholesale market
19 and take a substantial financial loss on his investment,
20 he has no ready market in which he can dispose of
21 his diamonds". Now, to go back, first of all, were
22 you, to your knowledge, one of the experts consulted
23 by the RCMP prior to April 13, 1977, the date of this
24 affidavit?

25 A I was.

1 Q And did they ask you about the particular proposition
2 that is posed here in Paragraph 2 on Page 3 of the
3 affidavit?

4 A Yes, they asked me if there was a resale market and
5 naturally, I stated that at the prices they were being
6 sold at, there was absolutely, - yes, she has a
7 resale market. There is a resale market for anything,
8 but a fair value would be twenty-three cents on the
9 dollar. That would be the resale value on the wholesale
10 market.

11 Q All right. Now, let's go back, though. The statement
12 here is that "these diamonds were being sold at a
13 two hundred per cent to three hundred per cent markup
14 over their wholesale value". Now, with that kind of
15 markup, in your opinion, how long would an individual
16 have to hold the diamonds in order for him to realize
17 his purchase price if he were to sell those diamonds
18 on the wholesale market?

19 A Well, if you are going by ten per cent a year increase,
20 two hundred to three hundred per cent would mean
21 between twenty to thirty years to get your money back
22 and depending on how old a person is when they are
23 buying, I suppose most likely it would be a very good
24 investment for your grandchildren.

25 Q But would it be a good investment for a person who

- 1 purchased today?
- 2 A No, because even at ten, ten per cent a year, it
- 3 takes twenty to thirty years to get it back. Now,
- 4 if the price goes up a little more, it could take
- 5 fifteen years to get your money back, but that is
- 6 hardly an investment if it takes fifteen years just
- 7 to get your money back.
- 8 Q Now, in regard to Paragraph 2 on Page 3, you did, did
- 9 you not, actually purchase diamonds for the Merchant
- 10 Diamond Group on three separate occasions?
- 11 A I did.
- 12 Q Okay. And when did you make your first such purchase?
- 13 A February, '76.
- 14 Q Now, at that time, can you tell us what you paid for
- 15 a quarter carat stone?
- 16 A I paid, at that time, \$300 a carat, \$75 for the stone.
- 17 Q Okay, and where was that that you paid \$300?
- 18 A In Antwerp.
- 19 Q And you made a bulk purchase of quarter carat stones
- 20 for Merchant Diamond Group?
- 21 A Yes. There were quarters, thirties, forties and
- 22 halves.
- 23 Q Now, with the \$75 per quarter that you paid, were
- 24 there any additional costs to Merchant Diamond Group
- 25 on that \$75?

1 A Well, there was, of course, by the time you get it
2 into Canada, there is a twenty per cent hidden sales
3 and excise tax, so you have to add twenty per cent
4 on top of that and actually, I charged something, so
5 really, in terms of cost, you would have to put my
6 trip towards it and if you spread it out over the amount
7 of money, I don't think it amounts to, you know, a
8 great deal in percentages, but let's say there was a
9 twenty-five per cent total cost on the stone in order
10 to land it in Canada and legally be able to sell it,
11 so seventy-five and twenty-five per cent of that is,
12 say about \$20, I don't think it is that much, but it
13 becomes \$95 would be their actual cost.

14 Q Now, that \$95 which was the actual cost to Merchant
15 Diamond Group, do you know, from your own knowledge,
16 how much they were selling in February of 1976 these
17 quarter carat stones for to the public?

18 MR. RADLER: If the Court please, I don't think
19 that is the issue here nor is it one
20 of the allegations upon which the search
21 warrants were issued.

22 MR. PERRY: It goes to the markup which is
23 alleged in the affidavit, your Honor.

24 MR. RADLER: I don't think that is one of the
25 allegations with respect to misrepre-

sentation.

THE COURT: I suppose in order to find out how much it would appreciate, we would have to know what the expense was.

MR. RADLER: I will withdraw the objection.

THE COURT: Let us go on.

MR. RADLER: I will withdraw it.

THE WITNESS: \$310. That is what I was told,
anyway, so from ninety-five to \$310.

BY MR. PERRY:

Q So that is a markup of three hundred per cent?

A It depends which way you look at it. Some people say it isn't even a hundred per cent even if you sell it for \$1,000, but going to cost, ninety-five to three ten, it is three times as much, a little better than three times as much. It's a healthy markup.

Q And with the ten per cent a year increase in the value of diamonds, an individual would have to hold that diamond - -

A That particular diamond twenty-five years providing everything remains the same, you know, neither one of our dollars takes a real drop or the European currency doesn't go up tremendously and it just remains the same, it will take twenty-five years.

1 Q For the person to realize his purchase price?

2 A That's right.

3 Q And the reason for that is that the only place or
4 the only readily available market is the wholesale
5 market where a person could sell his or her diamond
6 holdings, is that correct?

7 A That's affirmative, yes.

8 Q One further point in regard to Defendant's Number 4,
9 these prices that are reflected here, would they
10 include within them a certain amount or a certain
11 percentage that would go to the dealer who sold these
12 stones?

13 A I don't follow that one. I am sorry.

14 Q Okay. Well, with the prices, say, in September of
15 1976, and you correct me if I am wrong, okay.

16 MR. RADLER: Oh, yes, I will correct you, if
17 you are wrong for sure.

18 MR. PERRY: Okay.

19 THE WITNESS: I think I am with you now, yes.

20
21 BY MR. PERRY:

22 Q All right.

23 A The original price thereof, - take a quarter carat,
24 it is a nice easy one, I think.

25 Q That is, as I recall the invoices that were submitted

1 in support of this exhibit, there was a purchase here
2 in September of '76 from an organization called
3 Belles Bijoux.

4 A Yes. Their prices would be about fifteen per cent
5 higher than the prices that I paid at Antwerp because
6 these people are also entitled to make a markup, let's
7 be fair, by all means.

8 Q All right, and that would be reflected all the way
9 through with these figures being - -

10 A Those prices there are not actually prices at Antwerp.
11 These prices are prices already prices charged here
12 by local diamond dealers which include their markup,
13 by all means, yes.

14 MR. RADLER: I guess by way of objection,
15 because that is the only way I am
16 entitled to speak, I think the record
17 should reflect we never made any other
18 such representation. That's what we
19 paid in Canada from Belles Bijoux.

20 THE COURT: That is a Canadian - -

21 THE WITNESS: Supplier.

22 MR. RADLER: Sure.

23 MR. PERRY: No. The purpose being that he has
24 given some figures in relation to his
25 dealings.

1 MR. RADLER: All right.

2 MR. PERRY: And anybody looking at the record,

3 I would like it clear as to what the

4 possible disparity would be.

5 MR. RADLER: Okay.

6 THE WITNESS: Yes. In other words, the diamonds

7 which I bought in February of '76 for

8 \$300 a carat right at Antwerp could

9 quite easily have been valued, if they

10 would have bought them in Toronto, in

11 Canada at \$350 and the cost would then

12 have to be even higher than the \$95.

13 It would have been about \$110, their

14 cost, by all means.

15

16 BY MR. PERRY:

17 Q Now, Mr. Arend, did you, at one time, become aware

18 that your name was being used in the literature of

19 the Merchant Diamond Group, Incorporated?

20 A Yes. One of my customers out west sent me a very

21 nasty letter. Apparently, one of his customers

22 bought, and I don't know from whom, but for all

23 intents and purposes, let's say from one of the

24 diamond investment houses and got hold of one of

25 the literature charts and found my name on the back

1 and, you know, not only did he write me, but he called
2 me and kind of accused me of some unfriendly dealings
3 at which time I sent a registered mail letter to the
4 Merchant Diamond Group. As a matter of fact, you have
5 a copy of that letter and I asked them to please take
6 my name off their literature since I had not bought
7 for them for an entire year and since I had never
8 been or never, as far as I am concerned, ever appraised
9 as such, which means that I actually put my John
10 Henry on the bottom of the appraisal certificate for
11 the Merchant Diamond Group because I let it be known
12 right from the beginning that I really wasn't interested
13 in doing appraisals for them, that I had no objections
14 in buying for them and, of course, I couldn't buy and
15 appraise at the same time, because that would be, I
16 would say, highly unethical and I got a call a couple
17 of days later from Mr. Lindzon stating that he just
18 had a few left and that he, - when they were going to
19 make the next brochure certainly would take my name
20 off.

21 Q All right, and approximately when was the last time
22 that you did any buying for Merchant Diamond Group?

23 A I bought for them, - just hang on a second, - May the
24 14th, '76.

25 Q And had you had any other relationship with them, or

1 have you had any other relationships with Merchant
2 Diamond Group other than as a buyer on the three
3 occasions that you have told us about?

4 A No. The first time I actually got to know that they
5 even were in existence was when one of their fellows
6 came in with a bunch of diamonds which someone had
7 bought for them to find out if I was interested in
8 buying these diamonds from them which I subsequently
9 did, and it was like in either December or January,
10 1976 and it was at that time that we discussed the
11 possibility that I would go overseas for them to buy
12 and I gave them the guarantee that if I would buy these
13 stones, they would not be stuck with any of them.
14 In other words, these diamonds would cohere with
15 whatever their appraisal wanted and whatever diamonds
16 that the appraiser rejected I would buy back from them
17 and on the three occasions that I bought stones for
18 them, I think I bought back about twenty or thirty
19 stones from them, so in other words, the diamonds I
20 bought they didn't get stuck with any one stone.
21 It was kind of a foolproof safe buy for them because
22 they knew that whatever diamonds I bought for them,
23 they could sell.

24 Q Were you ever made aware in the course of your dealings
25 with Merchant Diamond Group that they were advertising

1 the diamonds that they were selling as investment
2 diamonds?

3 A Well, I have to be very honest with you. To me, the
4 word "investment diamond" is the same that when someone
5 says they have a blue-white diamond, you know, a flaw-
6 less blue-white diamond. There is no such thing as a
7 blue-white diamond and there is no such thing as an
8 investment diamond. A diamond is a diamond and certain
9 stones, by all means, go up more than others, but
10 the basic purpose of a diamond is to put it in a piece
11 of jewelry as an adornment, so investment diamonds,
12 that really doesn't mean anything.

13 Q Did you become aware that Merchant Diamond Group was
14 advertising their diamonds as investment diamonds?

15 A Yes. I was getting, - kind of getting made aware of
16 that, not necessarily by Merchant Diamond, but by other
17 people because more and more of the diamond investments,
18 whatever you call it, businesses were coming up and
19 naturally, people in the trade were, I would say,
20 slightly concerned about the aftermath after it all
21 would be over because none of us really thought it
22 would last for a very, very long time, but the type
23 of markups that were being charged, so by all means,
24 they have to sell them as something, so you sell them
25 as investment diamonds rather than jewel... diamonds.

1 It sounds better, maybe.

2 Q Why didn't you believe these would last because of
3 the markups?

4 A Well, first of all, certain people, - I mean not all
5 people are relatively dumb, I suppose, and I can
6 invest a lot of money in some diamonds, you most
7 likely get a second opinion somewhere.

8 THE COURT: This is the philosophy hour.

9 MR. RADLER: Right. I just don't think it is
10 proper. I don't know what to do here.

11 THE COURT: Mr. Perry, this is philosophy here.

12 MR. PERRY: All right.

13 THE COURT: Whether certain people are dumb,
14 I suppose some people are smarter than
15 others.

16 MR. RADLER: There are an awful lot of dumb
17 doctors on that chart if that is the
18 case, and I just really think this is
19 beyond the problem in this case. I
20 would object for the record, your Honor.

21 THE COURT: Mr. Perry, why people invest and
22 why they do not invest, I think that is
23 so speculative.

24 MR. PERRY: Well, actually, your Honor - -

25 THE COURT: There is certain information which

1 is set forth in your affidavit. We are
2 here to test whether that is true or
3 false, whether the agent's representa-
4 tions to the Court were based upon
5 fact or were not.

6
7 BY MR. PERRY:

8 Q Very well. Then to summarize, Mr. Arend, in regard
9 to Paragraph 1 on Page 2, and in regard to Paragraph 2
10 on Page 3, both of which representations you were
11 contacted by in regard, or contacted by the RCMP,
12 you would agree with the representations made in
13 those two paragraphs, is that correct?

14 MR. RADLER:

If the Court please, he has already
15 been through this. He went right
16 through Paragraph 1 and right through
17 Paragraph 2.

18 THE COURT:

Whether he would agree or did not
19 agree, that would be a matter for anal-
20 ysis on argument. It certainly does
21 not add anything to him for him now to
22 say he agrees. We will listen to cross
23 examination on that also.

24 MR. PERRY:

Very well.

25 THE COURT:

I will sustain the objection.

1 MR. PERRY:

You may inquire.

2
3 CROSS EXAMINATION BY MR. RADLER:

4 Q Let me start with that. It is not where I intended
5 to start, but let us talk about Paragraph 1 on Page 2.
6 As a matter of fact, Paragraph 1 on Page 2 is not
7 true, is it, Mr. Arend, because in the first sentence
8 where you say "The value of diamonds as a commodity
9 has had a maximum rate of appreciation in recent years
10 of between approximately 8 to 9 per cent", you meant
11 to say rough diamonds, didn't you?

12 A They are directly related, my friend.

13 Q Did you not testify in response to Mr. Perry's question-
14 ing that the 8 to 9 per cent increase referred to
15 rough diamonds?

16 A Yes.

17 Q Where does it say in that sentence "rough diamonds"?

18 A Well, if I can read it a little bit around, the rough
19 diamond is at the bottom, rather than at the top.

20 Q Where does it say in the sentence - - Mr. Radler,
21 everybody has techniques of examination. It does not
22 say it in the sentence. That is clear. Supposing we
23 have a jury, maybe it means something.

24 MR. RADLER:

Right, sir.

25 THE COURT:

It does not say anything about

rough diamonds in the first sentence.

BY MR. RADLER:

Q And in the second sentence, it is completely switched around, isn't it?

A That's right.

Q The representation made to this Court should have stated that the rate of appreciation applies to rough, uncut diamonds, doesn't it?

A Yes.

Q Pardon?

A Yes, no arguments.

Q And that is wrong the way it is stated?

A If you take it as per the letter.

THE COURT: Excuse me.

THE WITNESS: Am I supposed to say, - I don't know?

THE COURT: Mr. Arend, in the trade, is there a difference between rough and raw?

THE WITNESS: No. Rough and uncut and raw diamonds are all the same. Actually, usually raw diamonds, the uninitiated will use the word "raw", but in the trade, it is called "rough".

THE COURT: And "rough" and "uncut" - -

THE WITNESS: Is the same.

1 THE COURT: Is the same?

2 THE WITNESS: Yes, sir.

3 THE COURT: So "raw" and "uncut" is merely
4 saying the same thing in different
5 words?

6 THE WITNESS: That is affirmative, yes.

7
8 BY MR. RADLER:

9 Q I think perhaps I misstated my question. Did you not
10 mean to say in that statement that cut and polished
11 diamonds appreciate at a greater rate than do rough
12 or raw and uncut diamonds?

13 A Usually, might be two or three per cent, depending on
14 the rate of currency fluctuation.

15 Q All right. So, with respect to that, - well, never
16 mind. All right. Now, let's talk about you for a
17 second, all right? I think you have told the Court
18 and Mr. Perry that you took some courses at the
19 Gemological Institute of America?

20 A No. I told you that I wrote the exams and I took the
21 diamond course of the Gemological Institute of
22 America and I am the recipient of their qualified
23 gemologist or their gemologist diploma. That's
24 affirmative.

25 Q Were you in residence at the Gemological Institute of

1 America?

2 A In New York, yes.

3 Q How long did you study there?

4 A It was a one week course for the diamond paper and
5 I wrote the other exams at the University of Toronto
6 for two days.

7 THE COURT: The University of where?

8 THE WITNESS: Toronto.

9 THE COURT: University of Toronto?

10 THE WITNESS: Of Toronto, yes.

11 THE COURT: As a course?

12 THE WITNESS: No. They sent the examinations
13 over to the University and they had
14 an invigilator there and I wrote at
15 their premises under the supervision
16 of an invigilator.

17 THE COURT: Under the supervision of what?

18 THE WITNESS: An invigilator they called it in
19 Toronto. I don't know what, - a
20 professor.

21 THE COURT: A professor. Is he with the
22 University?

23 THE WITNESS: Yes. The professor was a University
24 professor, but the University was just
25 accommodating the Gemological Institute

1 of America so I could write their
2 exam in Toronto.

3 BY MR. RADLER:

4 Q You did not attend the six weeks residency course in
5 Los Angeles, did you?

6 A No, I didn't.

7 Q Now, with respect to your relations with Merchant
8 Diamond Group, you were approached by them, you told
9 me, in 1976, is that correct?

10 A It might have been, like I say, December of '75 or
11 January of '76.

12 Q And you were approached by certain individuals from
13 Merchant Diamond Group, were you not, with diamonds
14 that their appraiser had rejected as not being
15 appropriate to sell to the public?

16 A That's affirmative.

17 Q Right?

18 A Well, not being appropriate to sell to the public as
19 the type of diamonds that they were selling.

20 Q They were rejects, weren't they?

21 A No. They actually were very nice stones, but they
22 were rejects as far as their purpose is concerned.

23 Q Okay. Fine. You bought those diamonds?

24 A Yes, sir.

25 Q And then you made an arrangement with Merchant Diamond

1 Group whereby you would go to Europe on their behalf
2 and purchase diamonds for them, right?

3 A That's affirmative.

4 Q For which you were paid all of your expenses?

5 A Yes.

6 Q And a substantial amount of money in addition, right?

7 A That's right.

8 Q So you were employed by them for some period of time,
9 weren't you, for these purposes?

10 A Oh, I wouldn't call it being employed by them, but that
11 week I worked for them. There is no two ways about it.

12 THE COURT: Mr. Arend, the word "employed"
13 carries some connotations.

14 MR. RADLER: I will withdraw that.

15 THE COURT: Was he an independent?

16 MR. RADLER: I think so.

17 THE WITNESS: I am an independent. I received
18 a reüneration for which we decided
19 beforehand how much it would be and I
20 was going to buy their diamonds for them
21 but also permit the status where I
22 promised them that whatever was rejected
23 I would buy, so it was a fair deal on
24 every side.

25 THE COURT: The expenses of your trip were paid

1 for?

2 THE WITNESS: Yes.

3 THE COURT: And you were paid a certain
4 percentage or commission on the diamonds
5 you purchased?

6 THE WITNESS: That is right.

7 THE COURT: With the additional understanding
8 that you have explained to us?

9 THE WITNESS: That's affirmative.
10

11 BY MR. RADLER:

12 Q And in addition, and I do withdraw the word "employed".
13 I don't mean to imply you were wholly employed by
14 them, but you entered into, what lawyers might call,
15 a special engagement to buy for them, right?

16 A Yes.

17 Q And as a matter of fact, in March of 1976, after you
18 got back, in addition to your expenses and in addition
19 to your commission, you got a check for \$2,500 too,
20 didn't you?

21 A No. The \$2,500 was the commission.

22 Q Was the commission?

23 A Yes.

24 Q And you got all your expenses paid?

25 A They bought my ticket and they paid for the hotel and

1 you know, don't get things wrong, these are very nice
2 people.

3 Q I don't have anything wrong at all. I agree with you.

4 A If we went out, if we had dinner, they paid for the
5 hotel and they paid the commission and I got paid
6 when I submitted my invoice. There was no hard feelings
7 on either side.

8 Q Great, okay. Well, let's talk about that, okay?
9 You made a deal with them whereby you would buy back
10 any diamonds that bear appraiser rejected - -

11 A Rejected.

12 Q And the reason why you could not be an appraiser for
13 the public was because you had bought the diamonds
14 in the first place.

15 A That's right, that's what I said.

16 Q And that is fair, you would have a conflict of interest,
17 but as you said, - I think this is your language, in a
18 sense, you were their original appraiser because you
19 bought diamonds for them and you made an assessment
20 as to the value of the diamonds that you were purchasing
21 for Merchant Diamond Group when you were over there in
22 Holland, right?

23 A Wrong. That's where I disagree with you. I was not
24 their appraiser. I was their buyer. There is a big
25 difference between a buyer and an appraiser. In fact,

1 one of the reasons that I did not want to put the
2 appraisal on, "A" it was relatively unethical, but
3 "B" that the appraising, the appraisal of the particu-
4 lar diamonds I told them so many times was too high.

5 Q I understand what your contention is. I am merely
6 asking you whether, when you were questioned by Mr.
7 Perry, you didn't say that in a sense you were their
8 appraiser because you bought the diamonds for them
9 in the first place. If you deny that, the record
10 will stand on its own. Just tell me whether you
11 deny saying that or not?

12 A No. I was their buyer, not their appraiser.

13 Q Now, you wouldn't buy them low quality diamonds,
14 would you?

15 A I didn't mention that, but I bought them whatever
16 they wanted. They were good stones, top commercial
17 stones, no argument, VVS or better. They were very
18 nice stones and I tell you why, because I made an
19 agreement with them that I would buy back any stone
20 that was rejected by their appraiser. I am not in
21 the business to go to Antwerp to buy diamonds for
22 someone else and to buy back half of the diamonds
23 because I bought the wrong stuff, so that I bought
24 beautiful diamonds, no arguments, nothing of that
25 was ever mentioned that they weren't what they said

1 they were selling.

2 Q So that with respect, at least, to your relationship
3 with Merchant Diamond Group as a buyer, if you will,
4 of the diamonds, the diamonds which you bought for
5 them and which they in turn resold to the public
6 were good quality diamonds, VVS?

7 A They were VVS or better, many, many flawless. The
8 only thing was the color wasn't perfect, but they
9 were a top commercial stone which was what they were
10 selling, no arguments.

11 Q Fine, thank you. All right. Now, you then went on
12 these buying trips for them, is that right?

13 A I went on three occasions, yes.

14 Q On the first trip, you went to Antwerp, didn't you?

15 A That's right.

16 Q And that would be in February of 1976?

17 A That's affirmative.

18 Q You were accompanied by Mr. Doren, by Mrs. Doren,
19 by Mr. Lawrence and by Mr. Bader, right?

20 A Yes.

21 Q And you went to the place whose name I can't pronounce
22 where you buy diamonds?

23 A The Diamond Bourse.

24 Q All right. There you purchased about \$50,000 worth
25 of stones, didn't you?

1 A I really, - if they say fifty, it is fifty. It
2 certainly is close, it might be fifty, fifty-five.
3 I didn't pay for them. They paid for them, but
4 it certainly was a considerable amount of money.

5 Q All right, and in keeping with the arrangement that
6 you had made with Merchant Diamond Group, whereby you
7 purchased these high quality diamonds for them, some
8 of those diamonds were rejected, weren't they, by
9 their appraiser?

10 A Yes, and I bought them back.

11 Q And they were rejected as being unsuitable for the
12 purposes for which Merchant Diamond was selling them?

13 A That's right.

14 Q No problem there, right?

15 A No problem, no, sir.

16 Q You bought them back?

17 A Yes, sir.

18 Q Okay. Now, you were making money, this was a perfectly
19 good, sound, legitimate business arrangement, was it
20 not, right?

21 A Certainly was.

22 Q And as a matter of fact, when you were over there
23 buying for Merchant Diamond Group, and please don't
24 misunderstand me, - I don't see anything wrong with
25 this, you also had an opportunity to buy on your own

1 account, did you not?

2 A That's affirmative.

3 Q And you did?

4 A I did.

5 Q And so that when you were over there having your
6 expenses paid for by them, your hotel and your air
7 fare and your commission, you also, frankly, had a
8 free opportunity to buy for yourself?

9 A I did.

10 Q All right. Now, the second trip was in the winter
11 or spring of 1976, shortly thereafter?

12 A Yes.

13 Q And the same arrangement, right, except that time, I
14 think you went alone, didn't you, to Antwerp?

15 A I went alone and Stanley Bader called me every night
16 at 10:00 o'clock or 12:00 o'clock, whatever it was.

17 Q And once again, in that trip, you bought high quality
18 VVS or better stones, okay?

19 A Same merchandise.

20 Q All expenses paid and you yourself bought for your
21 own account?

22 A Yes.

23 Q Right?

24 A I think I bought some, but I may or may not have
25 bought for myself, but I certainly had the opportunity

- 1 and nobody denied me the opportunity.
- 2 Q Nor do we today. I am only trying to bring out the
- 3 facts.
- 4 A Yes, those are the facts.
- 5 Q All right. Your last trip, however, was considerably
- 6 later in 1976, wasn't it?
- 7 A It was in May.
- 8 Q As a matter of fact, Mr. Arend, that was your last
- 9 trip for Merchants Group, wasn't it?
- 10 A That's affirmative.
- 11 Q Now, on that trip, you went over with Mr. Lindzon?
- 12 A That's right.
- 13 Q And there you asked Mr. Lindzon for a bigger share
- 14 of the percentage, didn't you?
- 15 A I asked Mr. Lindzon for a bigger share of the
- 16 percentage, - no. I told these people right from
- 17 the beginning that the minimum amount of money that
- 18 I would go for was \$500 a day or \$2,500 for the week.
- 19 He was only going to buy \$10,000 worth of diamonds
- 20 and five percent of that would be \$500 and it wasn't
- 21 worth my while.
- 22 Q And you had an argument, didn't you?
- 23 A I don't think we had an argument at all.
- 24 Q You refused to purchase additional diamonds for
- 25 Merchant Diamond Group unless they paid you another

1 thousand dollars, is that not true?

2 A I can't recall, to be very honest with you.

3 Q You don't recall that?

4 A No.

5 THE COURT: You did have a disagreement with
6 him?

7 THE WITNESS: With Mr. Lindzon? It is the first
8 we went to Zurich together on Tuesday
9 night and they paid my fare. No, I am
10 sorry, I don't think we had one and if
11 we had one, - where is Mr. Lindzon?
12 I would like to hear the argument
13 because Mr. Lindzon is the one who
14 called me back just a couple of days
15 ago in April when I sent the letter and
16 said "Robert", you know, "how about
17 doing some appraisals for us", and I
18 think you are mistaken there.

19
20 BY MR. RADLER:

21 Q Mr. Arend, I only wish I could bring Mr. Lindzon into
22 this courtroom, but for reasons known to others
23 besides yourself, I cannot. My question is very
24 simple. Did you insist on receiving another thousand
25 dollars from Mr. Lindzon before you would buy diamonds

1 from Mr. Lindzon?

2 THE COURT:

For Mr. Lindzon.

3 BY MR. RADLER:

4 Q For Mr. Lindzon, and if you don't recall - -

5 A I am sorry, I don't recall.

6 Q You have no recollection?

7 A No.

8 Q All right, and you have no recollection of a disagree-
9 ment with Mr. Lindzon?

10 A None whatsoever.

11 Q Well - -

12 A We stayed at the same hotel, we ate the same food, we
13 went to Switzerland. As far as I am concerned, there
14 was absolutely no disagreement. There wasn't.

15 THE COURT:

Mr. Arend, let me ask you this:

16 Did you, in fact, buy any diamonds for
17 Mr. Lindzon or any of these other
18 individuals on this trip?

19 THE WITNESS:

Certainly did.

20
21 BY MR. RADLER:

22 Q Now, let me ask the next question, however. Since that
23 time, you haven't bought any diamonds for Merchant
24 Diamond Group, have you?

25 A No, because they said they were buying cheaper in

1 Toronto when they added up all the expenses it had
2 cost them and you know, stories like that. Lots of
3 people are selling the diamonds before I went and
4 there were people trying to sell them diamonds during
5 the time when I went with them and people said,
6 "Well, you really don't save that much money. All
7 you are saving is ten, twelve per cent and you are
8 paying the rent of five per cent and your expenses
9 are high. You have to pay while you are in Antwerp.
10 You have to pay right there and then. There is no
11 credit allowed, while if you buy from us, we give you
12 the diamonds, you pick the diamonds you like", that's
13 how it was explained to me, "Pick the diamonds you
14 like. If they are good enough for Caldera, you buy
15 them and you pay us and otherwise you have no obliga-
16 tion". That's why they were buying diamonds in
17 Toronto as far as I knew.

18 Q Who is Caldera?

19 A Caldera is their appraiser.

20 Q The man who rejected some of the diamonds that you
21 had purchased, right?

22 A The man I had a talk with before I went. Oh, yes,
23 the same fellow.

24 Q All right. That's the question.

25 A Yes.

1 Q The man who rejected some of the diamonds?

2 A Yes.

3 Q I am not sure whether you answered the previous
4 question, so I will just ask it very simply. You
5 haven't bought any diamonds on behalf of Merchant
6 Diamond Group since the trip in May of 1976 to
7 Antwerp?

8 A That's right, I haven't bought any.

9 Q And since that time, you have had no free trips to
10 Europe on behalf of Merchant Diamond Group?

11 A No.

12 Q No expenses paid and no commissions received from
13 Merchant Diamond Group?

14 A That's right.

15 Q And as a matter of fact, other people are receiving
16 the moneys that you used to get from Merchant Diamond
17 Group, right?

18 A Oh, I think you are putting it a little in the wrong
19 perspective. I am my own boss. I have since May,
20 1976, I have been in Europe seven times at my own
21 expense so if you are trying to tell me that I needed
22 their free trips, I write off a business trip to
23 Europe, so really the fact that I happened to be
24 there at their behalf certainly was very, very nice,
25 but if you think that I am going to be dishonest or

1 something like that because of a trip to Europe, you
2 must be kidding.

3 Q I am not asking or suggesting that you are dishonest.
4 I am merely asking you what happened, okay.

5 A As far as I am concerned, there was no disagreement.
6 They paid my bill. I sent them an invoice, Mr.
7 Lindzon, and you know if this thing ever comes to
8 Toronto and it is testified, the officers will be
9 there, you will see that we have no disagreement as
10 far as I am concerned.

11 Q Well, you don't have any real disagreement with
12 Merchant Diamond Group at all?

13 A No, none at all, no.

14 Q Now, talking about the trip in May of 1976 when you
15 went over in May of 1976, you didn't just go to
16 purchase diamonds, did you?

17 A No. We went, as well, to buy some emeralds.

18 Q In Switzerland?

19 A That's right.

20 Q Did you advise Mr. Lindzon of MDG at that time to
21 buy emeralds?

22 A I think it is a little bit the other way around. They
23 asked my opinion if emeralds would be a good invest-
24 ment and the reason was that some of their competitors
25 were selling low quality gray emeralds, so my advice

1 was "If you are going to go and go in the emerald
2 business, buy the best you can", which were, in this
3 case, really fine Santagauana emeralds.

4 Q Did you tell Mr. Lindzon that you would appraise
5 those emeralds if he purchased them?

6 A That's right.

7 Q Excuse me. At four times their value?

8 A Yes. Cost was \$20,000 and I said, "In a case like
9 this, because they were very rare", and as far as I
10 was concerned, they were bought at the right price
11 that normally speaking, when you purchase such a
12 thing, a normal diamond at cost, let's say, a hundred
13 dollars, a wholesaler in the middle makes fifty per
14 cent profit. That is one who puts the diamond in the
15 ring, so the cost becomes \$150 and the retail dealer
16 doubles it up, what is known as a keystone markup,
17 so, therefore, it is worth retail \$300. In this case
18 on account of these emeralds were very, very nice,
19 I said, "I am willing to put an appraisal on it of
20 give or take \$75,000." Normally speaking, there would
21 have been a triple type of markup on this, being
22 fifty per cent on the wholesale plus the doubling up,
23 except that we bought them, really, direct from the
24 source and the same stone in Toronto would be fifteen
25 per cent higher anyway, because the dealer would have

1 made fifteen per cent and by all means, I offered to
2 put, in this case, a very, you know, a very proper
3 appraisal on it and I still feel I would love to buy
4 these emeralds back. They were very, very nice
5 stones and when it comes to what some of them call
6 investment stones, these are very rare emeralds,
7 far rarer than the diamonds they are selling. Let
8 me finish, let me finish. I let you finish. You let
9 me finish.

10 Q It is very hard for me to get a word in with you, sir,
11 but I will let you finish. Go ahead.

12 A Then in this case, I would be willing to do the
13 appraisals for them because Mr. Doren was under the
14 impression that we hadn't bought these emeralds right
15 because they are relatively small stones and he
16 couldn't see the value. I, at that time, offered to
17 purchase these emeralds back from him for the price
18 he paid. He said, "No, leave it with me", and three
19 days or four days later when I actually came back to
20 their offices to say "Okay, I would like to buy them
21 back", I was advised the thirty-eight or thirty-nine
22 stones had been sold, so I don't think I did that bad
23 for them.

24 Q You are not on trial. I am only asking you a simple
25 question which is, did you offer to appraise - -

- 1 A Yes.
- 2 Q The appraisal at four times the value, roughly?
- 3 A Well, three and a half times, but seventy-five thousand
4 or eighty thousand, I won't quibble with you.
- 5 Q Some commodities you marked up three times, four
6 times, right?
- 7 A Some of them. In this particular case, the emeralds,
8 yes, they were worth the money.
- 9 Q All right. Now I would like to talk about some
10 specific allegations in the affidavit and some
11 terminology. Have you ever bought rough stones?
- 12 A Never bought rough diamonds.
- 13 Q As a matter of fact, you have to be a listed dealer
14 before you purchase at the site, right?
- 15 A To get a site, you have to be one of a hundred
16 privileged people who ten times a year buy and sell
17 a hundred thousand dollars or more, yes.
- 18 Q And you have never, yourself, purchased rough diamonds,
19 right?
- 20 A I have never purchased rough diamonds and I haven't
21 gone, - if you want, I will give you an answer before
22 you ask me, I haven't got a clue about their value.
- 23 Q So you don't have a clue about the value of rough
24 diamonds?
- 25 A Not rough diamonds, no.

1 Q Now, and the diamonds that Merchant Diamond Group
2 sells are cut and polished stones, finished goods?

3 A Right.

4 Q All right.

5 A And I do have a clue about their value.

6 Q So that when you testify as to the value of rough,
7 you are testifying without a clue as to their value,
8 right?

9 A I don't testify as to their value. All I did was
10 testify to the fact that Debeers Consolidated Mines
11 through the diamond syndicate raises the price of
12 rough diamonds by 8 to 9 per cent a year.

13 Q And Debeers, by the way, owns all the rough, or they
14 buy it so that they can control it?

15 A Most of it, sure.

16 Q Sure, so they can control prices?

17 A They basically control the price of rough, uncut,
18 raw diamonds.

19 Q But that is not what we are talking about, is it?

20 A No, we are talking about polished goods.

21 Q We are talking about polished goods, all right. Now,
22 with respect to your testimony as to the relationship
23 of diamonds to international currencies, I take it that
24 your testimony with respect to the increase per year
25 of diamonds of approximately ten per cent is directly

1 related to your evaluation of the increase or decrease
2 or, for want of a better word, fluctuations in the
3 international money market, right?

4 A Wrong. It has to do with, - the way you do it, it
5 has to do with the increase in price, like I said,
6 of the rough diamonds. The international money
7 market governs the price of a cut diamond in that
8 particular country.

9 Q Okay. You have no quarrel with plaintiff's, -
10 with Defendant's Exhibit 4 here at all, do you?

11 A No. I think it is relatively up to date, no argument.

12 Q So that the increases shown here would be legitimate
13 fair increases, right?

14 A For this particular span of time which is the most
15 unusual span of time in the last twenty years, at least,
16 that I can recall that I have been in the business,
17 yes.

18 MR. RADLER: I think the record will show that
19 happens to be the span of time Merchant
20 Diamond was doing business in the United
21 States of America, okay, or at least
22 in New York State.

23 THE COURT: Mr. Radler, September of '76.

24 BY MR. RADLER:

25 Q Yes. That is the time frame in which they were doing

1 business in New York.

2 A Yes, but this shouldn't be kept like this happens
3 every year, because if it would happen every year,
4 we would all be out of business very shortly.

5 Q Well, as a matter of fact, speaking of that, - well,
6 I don't mean to infer anything adverse, - in a sense,
7 they are competitors of yours, aren't they, Merchant
8 Diamond Group?

9 A No, not really. The type of people they sell the
10 diamonds to are not the type of people, - the type
11 of people I sell diamonds to are people who want a
12 diamond in an engagement ring or want to replace the
13 diamond, so they are not competitors as such. Yes,
14 they sell diamonds and so do I, but no, they are
15 different. They sell them as an investment. I sell
16 them as a piece of jewelry.

17 Q Well, they sell them at least to people who have
18 before their names "Doctor", so we have to assume
19 they are not as we were philosophizing necessarily
20 dumb, unless you want to attribute that to members
21 of the medical profession, right?

22 A No, no.

23 Q All right.

24 THE COURT: So we understand what this explains,
25 will you explain?

1 BY MR. RADLER:

2 Q Yes. This is a chart.

3 THE COURT: So we know where those names came
4 from.

5 BY MR. RADLER:

6 Q This is a chart introduced as an exhibit, Mr. Arend,
7 in this case, which reflects certain buy backs of
8 diamonds to purchasers from Merchant Diamonds and it
9 is intended to show, and I think it does, and it hasn't
10 been countervailed that those people who requested
11 buy backs received either their money back in full or
12 in some instances, a small increase, or in some
13 instances, a small decrease, and I only show it to
14 you to show you that on the chart, at least, and I
15 suppose I can't go beyond it, but there appear to be
16 a lot of doctors here, right?

17 A Yes.

18 Q And these are people who purchased the diamonds and
19 apparently were dissatisfied with the diamonds they
20 got for some reason or another and asked to sell
21 them back and they gave them back and made a little
22 money or lost a little money.

23 A Okay, but what would happen to the people who want to
24 sell them back right now, though? Where are they
25 going to sell them to? Just to get a little

1 realistic about this now.

2 MR. RADLER:

If the Court please, I think I
3 have been really indulgent about my
4 cross examination.

5 THE COURT:

There is no question that you have
6 to wait for a question. Another thing,
7 you say you are not in competition with
8 Merchant Diamonds. Who purchases from
9 you?

10 THE WITNESS:

Basically, insurance companies
11 or clients of insurance companies.

12 THE COURT:

Clients of insurance companies?

13 THE WITNESS:

Right, like if you had a diamond - -

14 THE COURT:

Individuals?

15 THE WITNESS:

Yes, individuals and some retailers.

16 THE COURT:

Retail stores?

17 THE WITNESS:

Yes.

18 THE COURT:

Do these people buy in bulk or in
19 single purchases?

20 THE WITNESS:

No, they buy - -

21 THE COURT:

Stone by stone?

22 THE WITNESS:

Normally, it is just in a ring,
23 you know, a diamond ring.

24 THE COURT:

Oh, a ring?

25 THE WITNESS:

A diamond in a ring.

1 THE COURT: Do you, - I do not know if the
2 word is "manufacture", but do you put
3 the ring and the stone together?
4 THE WITNESS: Yes, your Honor.
5 THE COURT: I see, and your place of business
6 is in Toronto?
7 THE WITNESS: In Toronto.
8 THE COURT: You have some employees?
9 THE WITNESS: I have a girl in my office, but
10 I am, basically, self-employed.
11 THE COURT: Who does the work of putting stone
12 and ring together? Do you do that, or
13 do you have somebody do that?
14 THE WITNESS: No, there is - -
15 THE COURT: Subcontracted out in the trade?
16 THE WITNESS: There is a manufacturer who supplies
17 the mounts. There is a diamond setter
18 who puts the stone in and there is a
19 polisher who polishes it.
20 THE COURT: These are all independent workers;
21 they do not work right in your place,
22 is that right?
23 THE WITNESS: Yes.
24 THE COURT: But you usually sell, instead of
25 selling individual stones, you would

1 make arrangements to sell them, as you
2 say, as adornment?

3 THE WITNESS:

Rings or a pair of earrings or
4 adornments for families.

5 THE COURT:

Evidently, you made the trips here
6 to Antwerp to buy in bulk for merchants.
7 Do you buy in bulk for others?

8 THE WITNESS:

I have bought in bulk for others.
9 Many, many times the amount, - you say
10 \$50,000 you think is a big deal.
11 \$50,000 I don't think really opens the
12 door.

13 THE COURT:

Mr. Arend, please. Just take one
14 question at a time and we will be a
15 bit ahead. You bought in bulk for
16 others?

17 THE WITNESS:

I buy in bulk for myself.

18 THE COURT:

You buy in bulk for yourself, right,
19 and then, with the stones that you
20 purchased, then you supervise the work
21 others do of putting stone to ring,
22 eventually to sale, retail store or
23 whatever; you do not have a regular
24 store of your own?

25 THE WITNESS:

No. I have an upstairs office,

1 a wholesale office.

2 THE COURT: Would individual people come there

3 if someone wanted to get a ring, would

4 they come?

5 THE WITNESS: Yes, I would sell, by all means.

6 THE COURT: Or to people who are in the

7 business, they would come and purchase

8 rings?

9 THE WITNESS: At a wholesale level, actually.

10 They don't pay retail.

11 THE COURT: You do not have to bear the

12 expense of - -

13 THE WITNESS: Of a retail store.

14 THE COURT: Of having the paraphernalia that

15 a retail store does?

16 THE WITNESS: That's right.

17 THE COURT: That is what you do.

18

19 BY MR. RADLER:

20 Q Nor, - your Honor anticipated my question. Nor do

21 you have a staff of salesmen?

22 A No, I haven't.

23 Q Okay, telephones?

24 A Haven't.

25 Q Large overhead for space?

1 A No large. To me it is large, but it is sure not
2 large in comparison to some other people.

3 Q I mean, you have been over to Merchant Diamond Group,
4 haven't you; they have got a lot of space.

5 A Yes, lots of space.

6 Q A lot of people to pay, a lot of telephone bills to
7 pay so that overhead, you know what that is?

8 A Yes.

9 Q So when you are talking about the cost to them and
10 whatever markup they may have, it is a pretty good
11 idea to figure in those expenses too, right?

12 A Oh, yes, by all means.

13 Q That would be fair, wouldn't it, whatever it may be.
14 There is a lot of it, I would assume. Okay. Just a
15 few more questions, if your Honor please. With respect
16 to Page 3 of the affidavit of Postal Inspector
17 Schneider, you understand that these are simply the
18 allegations in the affidavit; there has been no proof
19 here other than the allegations that this is, in fact,
20 the case, but I am using it to ask you questions,
21 all right?

22 A Proof, there has to be proof.

23 THE COURT: Mr. Arend, wait until you hear
24 a question.
25

1 BY MR. RADLER:

2 Q Now, you stated in response to Mr. Perry that you
3 were one of the experts contacted by the Royal
4 Canadian Mounted Police, right?

5 A That's right.

6 Q When were you contacted by the Royal Canadian Mounted
7 Police?

8 A I think it was in January. It could have been
9 February of this year.

10 Q It was after you had stopped buying for Merchant
11 Diamond?

12 A Oh, yes. I stopped buying last May.

13 Q And could you tell us what you, - well, strike that.
14 Do you know who the other experts were that were
15 contacted?

16 A I don't know.

17 Q You do not know. Now, it states that according to
18 these experts, no retail market exists for the resale
19 of diamonds, right? Is that your position?

20 A Certainly is.

21 Q In other words, if I have a diamond and I want to go
22 to a store, they are not going to buy it from me?

23 A Oh, yes, they will buy it at their price.

24 Q I appreciate that.

25 A There is no retail market. There is a market for

1 anything. There is a market for diamonds, but like
2 I told you, twenty-three cents on the dollar.

3 Q However, if I wished to sell my diamond, I will be
4 able to sell it for whatever it might be, I can sell
5 it?

6 A You can sell it for a loss anytime.

7 Q All right, fine. Just like if I invested in a stock
8 and decide I don't want to keep it for a while and
9 want to get out and get something back, I can sell
10 it and sell it for a loss, right?

11 A Yes, except the stock, the stockmarket is, it is a
12 little easier to sell than diamonds because there
13 are very few people who can be buying loose diamonds,
14 of course, and by all means, you can sell them and
15 if you are willing to take a loss, you take a loss.

16 Q And if I am willing to hold them, either because I
17 want to wait for whatever number of years it might be
18 before they appreciate or because I like the way it
19 looks on my finger, I can do that too?

20 A Certainly can.

21 Q Now, if Dr. Thorell who is Number 3 on Defendant's
22 Exhibit 7 were to buy a diamond of any sort or a
23 grouping of diamonds in December of 1976 from Burke's
24 in Toronto for \$743, do you think he could sell it
25 back to Burke's in Toronto on April 6, 1977 for \$743?

1 A Well, that would only be hearsay. I would say that
2 Burke's would allow him \$743 on the purchase of a
3 new ring. If they would pay him the money back, -
4 I don't work for Burke's, so I couldn't answer that.

5 Q I guess maybe I am not doing this very artistically,
6 but what I am asking you is, it is pretty unlikely
7 that a retail establishment would buy back a diamond
8 if you were dissatisfied after several months and at
9 what you paid for it, right?

10 A It is unlikely.

11 Q In these instances, however, it appears, does it not,
12 based upon the chart that all of these people who
13 didn't want their diamonds either got their money
14 back, made a little bit or lost a little bit, referring
15 to Defendant's 7, right?

16 A Yes, it looks good.

17 MR. RADLER: May I have just a moment, your
18 Honor? No, I guess that is all.
19 That's all I have.

20
21 REDIRECT EXAMINATION BY MR. PERRY:

22 Q Mr. Arend, you were asked about your relationship
23 with Merchant Diamond Group, and in particular now,
24 I would like to go to the reasons that you gave as
25 to why you would not be an appraiser for Merchant

1 Diamond Group?

2 MR. RADLER: Well - -

3 BY MR. PERRY:

4 Q I believe you said - -

5 MR. RADLER: Object. He has testified it would
6 be an inherent conflict which came out
7 on both direct and cross.

8 THE COURT: Maybe there is something we did
9 not hear. I will overrule it.

10 MR. RADLER: All right.

11 BY MR. PERRY:

12 Q You said at one point, in explaining why you did not
13 want to be an appraiser for Merchant Diamond Group,
14 you said that you didn't want to put the appraisals
15 on their stones because the appraisals they wanted
16 were too high.

17 A That's correct.

18 Q All right. Could you explain that statement, please?

19 A Well, yes, I try and explain it to you. I explained
20 it here before. The average fair markup on smaller
21 goods is fifty per cent for the manufacturer, the
22 wholesaler, and a hundred per cent for the retailer.
23 In other words, if something cost a hundred dollars,
24 the maximum retail value would be \$300, a hundred
25 plus \$50, one hundred fifty doubled up is three hundred.

1 They wanted to put a price on, just to give you an
2 idea, of the quarter carat stone which I told you
3 cost ninety, \$91.50 for \$375 retail and I told them,
4 you know, it was relatively impossible. I certainly
5 wouldn't put it on, but they found someone who gave
6 them and that was his opinion. However, in a Toronto
7 Star Magazine article - -

8 MR. RADLER: Now, if the Court please - -

9 THE COURT: Yes. I will sustain the objection
10 to what was in some magazine article.

11
12 BY MR. PERRY:

13 Q You, however, had a difference of opinion with the
14 Merchant Diamond Group as to the amount of the
15 appraisal?

16 A That's right. I told them at all times, and the
17 record will bear that, and will bear it again and
18 again, that their appraised prices were just too
19 rich and as far as I am concerned, misleading.

20 MR. RADLER: I am going to move that that
21 be stricken. I don't think that is
22 proper.

23 THE COURT: There is no jury.

24 MR. RADLER: Yes, okay. All right.

25 THE COURT: You were disturbed, as I understand

1 it, by some of the things that they
2 were doing, is that right?

3 THE WITNESS: Yes.

4 THE COURT: Let me ask you this: Did the
5 RCMP come to you or did you go to them?

6 THE WITNESS: No, I certainly didn't go to them,
7 no.

8 THE COURT: Before the RCMP came to you, did
9 you discuss the sales methods that
10 Merchant Diamond was using with other
11 people that you knew in the business?

12 THE WITNESS: Not necessarily Merchant Diamond.
13 It is just we have a half a dozen places
14 in Toronto who were doing this long
15 before Merchant Diamond was doing it.

16 THE COURT: On the telephone?

17 THE WITNESS: Oh, yes. That was discussed long
18 before I even went to Europe to buy
19 diamonds for them.

20 THE COURT: Who did you talk to about it?

21 THE WITNESS: Oh, other dealers, just people in
22 the trade.

23 THE COURT: All right. Name some other dealers
24 you talked to about it?

25 THE WITNESS: Well, well, Polish Diamonds which

1 which are a very, very large dealer in
2 Toronto; Boncol Brothers have an office
3 in Toronto and are very, very large in
4 New York, and other well-known people,
5 Noll Diamonds, and quite a few people
6 that, you know, we have lunch with and
7 certain things are being discussed and,
8 of course, things like this would be
9 discussed because this is relatively
10 new and in a way, some people thought
11 it was good for business and other people
12 thought it was not too good for the
13 business.

14 THE COURT:

Can you explain why some people
15 thought it was bad for the business?

16 THE WITNESS:

Yeah, because it is the word
17 "investment". If that word "investment"
18 would not have been in there, the prices
19 they charged were really not all that
20 much higher than the average retailer
21 charges for the same merchandise, but
22 it is that their salesmen made people
23 believe that they bought an investment
24 which they could convert into ready
25 cash at any time, which is a far cry

1 from the truth because I have had many
2 occasions the last six weeks people
3 come in and I have offered them twenty,
4 twenty-three cents on the dollar which
5 is very much higher than many of my
6 competitors who offer them fifteen and
7 eighteen cents on the dollar so a
8 ready market there was, if you want to
9 take a tremendous loss and that's why
10 some of our people thought it was going
11 to be bad for our business because the
12 general public would, - will shy away
13 from diamonds as jewelry or as adornment
14 that they would say "Oh, I would very
15 much rather buy a car or buy a snow-
16 mobile", and they are all in the
17 business to make some money so if you
18 get people upset with bad advertising
19 about diamonds, then the old story
20 that a diamond is the girl's best
21 friend, you know, is wrong.

22 THE COURT:

Mr. Arend, let us go back to the
beginning. Let us take one thing at
a time. You were familiar with the
stones they were selling because you

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THE WITNESS:

Yes.

THE COURT:

So that, as far as the price that they were charging for the stones they were selling to people, as I understand it, your judgment was, they were not charging very much more for those stones than people would pay for the stones if they bought them in many other locations, retail stores and other places, is that true?

THE WITNESS:

That is right, sir.

THE COURT:

All right, so that your complaint was that as far as the representation made to the purchasing public that there was a ready market for the stone, - in other words, a person, when you say "ready", I suppose if you sell an item, whether it is an automobile or it is a diamond, if you say, "Well, there is a ready market for this auto, if you buy this automobile for us for a thousand dollars, there is a ready market for it", there is the implication that a man will be able to go out in a week or two and

1 resell the car for a thousand dollars
2 and that was, as you understood it,
3 to be the representation here. Your
4 complaint is that your experience in
5 the business was that that was not so,
6 that the person, if he tried to sell it,
7 that most places he would go to, they
8 would only offer him somewhere between
9 fifteen and twenty-five percent on the
10 dollar, right?

11 THE WITNESS:

That's right, your Honor. That is
12 exactly right. It wasn't an investment
13 as such.

14 THE COURT:

Yes.

15 THE WITNESS:

It was a stone, yes, but it was
16 not an investment like some people
17 were made to believe.

18 THE COURT:

So that a man like yourself who
19 has been in the business for some time
20 and wants to continue in the business,
21 you felt that in the long run, that this
22 would turn many people off of being
23 interested in purchasing diamonds?

24 THE WITNESS:

Yes, your Honor, that's exactly
25 right.

1 THE COURT:

2 Do you know whether or not, -
3 you say the RCMP came to you. Do you
4 know whether or not any of the
5 individuals that you mentioned thus far,
6 that they went to the RCMP or the RCMP
7 came to them; do you know one way or
8 the other?

9 THE WITNESS:

10 I don't think anybody went to the
11 RCMP as far as our trade is concerned
12 because it is a relatively small trade
13 and, you know, people do their own
14 thing, but I know that the RCMP has
15 gone to other people. The only reason
16 that they came to me, as was explained
17 to me, was that my name is in the back
18 of their brochure against my will and
19 that's why they came to me. I am their
20 expert appraiser and their expert
21 whatever it is.

22 THE COURT:

23 Mr. Arend, as I understood it,
24 when you called to the attention of one
25 of the principals of Merchant Diamond
Company that you did not want your name
in their brochure, then he said "We will
take it out", and as far as you know,

1
2 THE WITNESS:

did he take it out?

3 No, because I sent the letter on
4 April the 7th and he called me about
5 the 9th or the 10th when he got the
6 letter. He said, "We understand we
7 only have a few left", and the few
8 left is apparently a few hundred
9 thousand and then "after we send those
10 out, we will change it".

11 THE COURT:

Was it changed, do you know?

12 THE WITNESS:

13 I don't know if it was changed
14 because I haven't seen any new brochure,
15 but he promised me that when they
16 change it, he would take out my name
17 and that they only had a few left.

18 MR. RADLER:

Your Honor.

19 THE COURT:

Mr. Radler.

20 MR. RADLER:

21 The only reason, for the record,
22 April the 9th or whatever it was, is
23 three or four days before they were
24 put out of business, so as a practical
25 matter, they couldn't do anything.

THE COURT:

It would be difficult.

MR. RADLER:

I apologize for the interruption,
but I thought we ought to clear it up.

1 THE COURT: All right. That is probably a
2 good thing to do. Any further questions?

3 MR. RADLER: I have a question in light of your
4 Honor's question, unless Mr. Perry - -

5 THE COURT: Mr. Perry.

6 MR. PERRY: You go ahead and ask your question.
7 I will bat in the clean-up spot.

8
9 RECROSS EXAMINATION BY MR. RADLER:

10 Q Didn't the RCMP tell you that the large jewelry store
11 in Calgary made a complaint about these diamond
12 investment companies and that's how this investigation
13 got started?

14 A They never gave me any reason.

15 MR. RADLER: Okay.

16
17 REDIRECT EXAMINATION BY MR. PERRY:

18 Q Mr. Arend, to go back to the point that Judge Curtin
19 was questioning you about concerning the representa-
20 tion that there was a ready market for these stones
21 and that these stones were a good investment, are
22 you saying that the representation made by the Merchant
23 Diamond Group was that you, - these steadily increasing
24 prices, - let's take, for example, Defendant's Exhibit
25 4, these prices are going up, are you saying that the

1 representation by their salesmen to the public that
2 diamonds are going up at this rate and, therefore,
3 if they buy diamonds now, they are going to be going
4 up at that rate, that that was misleading?

5 MR. RADLER:

If your Honor please, there has
6 been no foundation for this witness to
7 testify to that. He doesn't know what
8 their salesmen represent.

9 THE COURT:

I think that is true. I will
10 sustain the objection.

11
12 BY MR. PERRY:

13 Q Were you aware that they were making that representa-
14 tion?

15 MR. RADLER:

I object to that again.

16 THE COURT:

We are here to look at the
17 affidavit.

18 MR. PERRY:

I think it does tie in with
19 Paragraph 2 of the affidavit, your Honor,
20 in that the crux of Paragraph 2 is that
21 they make the representation that there
22 is this readily available market, when,
23 in fact, there is only a wholesale market.

24 THE COURT:

We have had this out and the
25 witness does not know, he is not privy

1 to the statements made in detail

2 MR. PERRY: May I inquire of the witness as
3 to whether or not he is aware of this
4 representation?

5 THE COURT: Put the question again.

6 Go ahead, put the question.

7
8 BY MR. PERRY:

9 Q Were you aware of the representation by the Merchant
10 Diamond Group that the increase in diamond prices,
11 that they were representing to the public, this
12 thirty-three to sixty per cent per year, that they
13 were making those statements in conjunction with, -
14 well, strike that.

15 THE COURT: Excuse me, Mr. Perry. That is the
16 point. I do not see that in the affidavit.

17 MR. RADLER: Neither do I. We are talking about
18 some sort of a ready market before that.

19 THE COURT: Because we have heard testimony
20 about retail market, wholesale market,
21 but as far as you do not put in here
22 exactly what they were saying and that
23 is what you are trying to get the
24 witness to give his view on.

25 MR. PERRY: Well, the availability of the

1 wholesale market goes to the question
2 of whether, - I should say the availability
3 of a retail market goes to the question
4 of whether or not this is an acceptable
5 or a good investment for a per of
6 the public.

7 MR. RADLER:

We have had testimony on that.

8 MR. PERRY:

9 Well, if I may finish, and if the
10 representation was made that diamonds
11 as here, are going up at thirty per cent
12 a year and the investing public is made
13 to believe that if they buy diamonds
14 up here at a four hundred per cent
15 markup and the diamonds are going to
16 continue to take off and go up at thirty
17 per cent a year, when, in fact, diamonds
18 are down here and they are climbing at
19 whatever percentage to the price they
20 have, that they already paid, but I
21 think it might be worthwhile for our
22 information, if nothing else, in terms
23 of evaluating Paragraph 2 of the
24 affidavit.

25 THE COURT:

Mr. Perry, my question is a simple
one. Where do you find anything said

1 about twenty to thirty per cent a year?

2 MR. PERRY:

In Paragraph 1.

3 THE WITNESS:

4 "Diamonds being offered to the
5 customer based on past performance
6 appreciated value at the rate of thirty-
7 three per cent to sixty per cent per
8 year". That, according to any expert,
9 anyone who knows anything about diamonds
10 will dispute that.

11 MR. RADLER:

12 I think my point is that he has
13 already testified as to his views and
14 this is not the proper witness to prove
15 the alleged misrepresentations. If they
16 have witnesses on that, they should
17 produce them.

18 THE COURT:

19 "The RCMP advises". Did Mr.
20 Schneider testify to this? I will permit
21 the witness to testify about this.
22 Go ahead, Mr. Perry.

23 BY MR. PERRY:

24 Q Mr. Arend, going now to the two alleged misrepresenta-
25 tions, combining them now, the alleged misrepresenta-
tion in Paragraph 1 and the alleged misrepresentation
in Paragraph 2, are you saying that one of these

1 disagreements that you had with Merchant Diamond
2 Group and the other sales organizations like it was
3 that they were charging prices that were, say, three
4 hundred per cent of the wholesale value so that they
5 were misleading the public into thinking that if they
6 paid this price, that was three hundred per cent over
7 the wholesale market, that the public or the person
8 who bought that diamond would think that his diamonds
9 were going up at this twenty to thirty per cent a year
10 or thirty-three to sixty per cent a year, when, in fact,
11 their diamonds were down here three hundred per cent
12 below the price that they had paid and they were
13 increasing at, you say, ten per cent a year toward
14 the price that they paid? Are you saying that that
15 was one of the misleading elements in their sales
16 presentation?

17 A That was one of them, but the one that really is the
18 clincher is that this \$300 retail value wasn't really
19 that unreasonable, taking the normal range of markup
20 in the trade. It is the appraised price where I
21 objected to and it is the one I can't talk about,
22 but the appraised price was supposed to be three
23 seventy-five or \$400.

24 THE COURT:

You just told us that the price
25 that the person was paying for it was

1 similar to the price that a person would
2 pay for it if he bought it from a retail
3 dealer.

4 THE WITNESS:

I still say that, but the appraisal
5 which is the sales gimmick, if I may
6 use it that way, had to be three seventy-
7 five to four hundred so that the
8 purchaser, the customer who ultimately
9 bought and purchased the stone was under
10 the misconception - -

11 THE COURT:

Mr. Perry, there is nothing here
12 about appraisals in the affidavit.

13 MR. PERRY:

Right. My question was not directed
14 to the question of appraisals. My ques-
15 tion was directed to what you have
16 indicated are your disagreements with
17 the sales tactics of the Merchant Diamond
18 Group and to go back now to the original
19 question, are you saying that one of the
20 unfair or one of the misrepresentations
21 that they made was that an individual
22 purchasing diamonds with a three hundred
23 per cent markup, those diamonds were
24 appreciating from that three hundred per
25 cent level on up in the percentage

1 increases that they were representing
2 to the public when, in fact, they had
3 purchased diamonds three hundred per
4 cent over the wholesale level and the
5 appreciation, if any, was coming from
6 the wholesale level up to the retail
7 price?

8 THE WITNESS:

That's right. That's why I told
9 them an average of twenty to thirty years
10 before you got your money back. That's
11 on the record. I mentioned that before.

12 MR. PERRY:

And you disagreed with him telling
13 the public that when they bought up here
14 at three per cent - -

15 MR. RADLER:

Your Honor - -

16 THE COURT:

Mr. Perry, we have gone over that
17 several times.

18
19 BY MR. PERRY:

20 Q All right. I will move on to something else, Judge.
21 Now, you were asked about purchasing emeralds for
22 Merchant Diamond Group. I believe you said it was
23 in May of 1976 that you went to Switzerland with Mr.
24 Lindzon, is that correct?

25 A That's correct.

1 Q And you told Mr. Lindzon that on those particular
2 emeralds you would place an appraisal on those
3 emeralds of four times their purchase price?

4 A No. I said seventy-five thousand and it cost him
5 twenty. Yes, between seventy-five and eighty, because
6 his cost was twenty plus twenty per cent tax.

7 Q Now, did you, in fact, place an appraisal on those
8 emeralds?

9 A No, they said it wasn't high enough, that they needed
10 a higher appraisal in order to break even.

11 Q Did they indicate to you just how high an appraisal
12 they wanted?

13 A Yes. They indicated a hundred thousand dollars on a
14 \$20,000 purchase and I said seventy-five would be
15 my maximum and if I said eighty and they said eighty,
16 I wasn't going to argue, between seventy-five and
17 eighty, and those are, you know, like I said before,
18 they are beautiful emeralds and today, certainly, if
19 anything, they might have gone up even more than
20 any diamonds mentioned here.

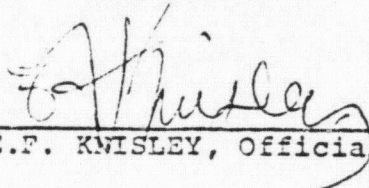
21 MR. PERRY: Okay. Thank you. I have no
22 further questions.

23 MR. RADLER: No further questions.

24 THE COURT: Thank you, Mr. Arend.
25

(Recess taken at 3:43 p.m.)

I certify that the foregoing is a complete
and accurate transcription of my shorthand
notes taken herein.


E.F. KNISLEY, Official Reporter, USDC, WDNY.

1 PROCEEDINGS: After recess, 3:51 P.M.

2 APPEARANCES: As before noted.

3

4 J O H N P. R O W L A N D (Toronto, Ontario, Canada), a
5 witness called by and in behalf of the Government, having been
6 first duly sworn, was examined and testified as follows:

7

8 DIRECT EXAMINATION BY MR. PARRY:

9 THE COURT: Mr. Parry.

10 BY MR. PARRY:

11 Q Mr. Rowland, what is your occupation?

12 A I am an officer of the Royal Canadian Mounted Police and
13 I hold the rank of Inspector.

14 Q Are you presently assigned to the Commercial Crime
15 Section of the RCMP in Toronto?

16 A That's right.

17 Q Mr. Rowland, directing your attention to April 5, 1977
18 did you have occasion on that date to meet with repre-
19 sentatives of the United States Postal Service in Toronto?

20 A I did. I met with Inspector Snyder.

21 Q In addition to Inspector Snyder I was present as well,
22 is that right?

23 A That's correct.

24 Q Now, prior to that meeting in Toronto on April 5, 1977
25 had you participated in an investigation of Merchant

1 Diamond Group, Limited in Toronto?

2 A I have.

3 Q And you were joined in that investigation by other
4 members of the RCMP, is that correct?

5 A That's correct.

6 Q As a part of that investigation did you conduct electronic
7 surveillance pursuant to a court authorization issued
8 by a court in Canada?

9 A We did.

10 Q Now, at the time of the meeting in Toronto in April
11 of 1977 had a determination been made by you and the
12 other members of your force who were working on that
13 investigation that in order to further your investiga-
14 tion it would be helpful, if not necessary, to have
15 searches and inquiries conducted in the United States?

16 A Yes, that is true.

17 Q Now, why was that so?

18 A By this time our knowledge of the Merchant Diamong Group
19 was that they had offices in Toronto and Buffalo and
20 virtually the two overlapped as one unit.

21 Q Okay. At the time of this meeting it was explained to
22 you, was it not, that in order for the United States
23 authorities to conduct searches in the United States
24 it would be necessary for us to have probable cause for
25 search warrants, is that correct?

1 MR. RADLER: I am sorry, I object to the
2 leading.
3 THE COURT: Perhaps, but I will overrule it.
4 Overruled.
5 MR. PARRY: You may answer.
6 THE COURT: Of course, the next question may
7 be also, but go ahead.
8 MR. PARRY: You may answer.
9 THE COURT: You knew that they needed probable
10 cause?
11 THE WITNESS: Yes, I did know.
12 BY MR. PARRY:
13 Q Now, did you provide the Postal Inspectors with informa-
14 tion that would give them the probable cause for a search
15 warrant?
16 A I gave them information with regards to the operation of
17 Merchant Diamond Group and that was their determination
18 as to whether or not there was probable cause.
19 Q Where did this information come from?
20 A] It came from electronic surveillance and inquiry made
21 throughout Canada.
22 Q The information from the electronic surveillance, - once
23 again, the electronic surveillance was conducted pursuant
24 to the court authori zation that you had, is that
25 correct?

1 Q Now, were you made aware some time after this conference
2 that in fact searches had been conducted in the United
3 States by our postal authorities?

4 A I was.

5 Q Now, did you at a later time come to the United States
6 for purposes of examining the material that had been
7 seized?

8 A Yes. I believe it was on May 10, 1977 I attended at the
9 Buffalo Strike Force Office, I believe it is, and viewed
10 some of the documents that were held there with relation
11 to Merchant Diamond, Inc.

12 Q Now, in regard to the search at the time that searches
13 were conducted in this country were searches conducted
14 in Toronto at the same time?

15 A Yes, and arrests were made on the same day.

16 Q That would be April 14, 1977?

17 A That is true.

18 Q You say arrests were made on the same day. Does this
19 mean that criminal complaints were filed against
20 individuals?

21 MR. RADLER: If the Court please, I object to
22 this. I don't think that is relevant
23 and doesn't go to the issue in the
24 affidavit?

25 THE COURT: I know arrests were made. It

1 certainly does not involve anything in
2 Buffalo, New York, - what happened in
3 Toronto.

4 BY MR. PARRY:

5 Q Were arrests made in Toronto?

6 A Yes. On April 14, 1977 persons we call principals in
7 Merchant Diamond, Limited, were arrested and - - -

8 MR. RADLER: Objection.

9 BY MR. PARRY:

10 Q Who were the persons who were arrested?

11 A Gerald Doren, Allen Lindzon, Eric Marks and Anthony
12 Lawrence.

13 Q What were the charges that were layed against those
14 individuals?

15 A Defrauding the public, Section 338.1 of the Criminal
16 Code; use of the mails to defraud, Section 339.1, and
17 conspiracy, Section 423.1.

18 Q In connection with Merchant Diamond Group in the course
19 of your investigation did you become aware of the involve-
20 ment of three individuals, Mr. Lindzon, Mr. Bader and Mr.
21 Smith in the founding of Merchant Diamond Group?

22 A Yes. Quite early in the investigation I had information
23 from another member of the RCMP that these three
24 individuals had formed Merchant Diamond Group together
25 with a company known as Value Trend Management.

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1 THE COURT: A company known as what?

2 THE WITNESS: Value Trend Management.

3 BY MR. PARRY:

4 Q Mr. Lindzon, Mr. Bader and Mr. Smith were previously
5 convicted in Canada of conspiracy to defraud the public,
6 is that correct?

7 A That's correct.

8 Q Now, in addition to being founders of Merchant Diamond
9 Group did they to your knowledge have any other functions
10 in regard to Merchant Diamond Group? In regards to Mr.
11 Lindzon did he have other responsibilities?

12 A I believe Mr. Lindzon was responsible for purchasing
13 diamonds for the company and other management functions.

14 Q What about Mr. Smith, did he have other functions in
15 connection with Merchant Diamond Group?

16 A He was known at Merchant Diamond Group but I have not been
17 able to determine exactly what his function was while he
18 was there.

19 Q Do you know if he or his wife Betty had any interest in
20 the ownership of Merchant Diamond Group?

21 A Yes. I know the stock was in her name.

22 Q Do you know if to this day Betty Smith continues to be
23 an owner of Merchant Diamond Group?

24 A I believe the shares were transferred toward the end of
25 March 1977 and paid for by the other principals of Merchant

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1 Diamond Group.

2 Q Do you know what function Mr. Bader had in Merchant
3 Diamond Group other than co-founder?

4 A Mr. Bader was employed, - once again was employed at
5 Merchant Diamond Group. At one point I know he was sent
6 to Florida to establish an office in Florida and just
7 exactly how long he was in Florida I don't recall exactly
8 right now.

9 Q Okay. You did testify, however, that charges were layed
10 against two other individuals, a Gerald Doren and an
11 Anthony Lawrence. Can you tell us what their connection
12 was with Merchant Diamond Group?

13 A Yes. They signed an agreement with Merchant Diamond on
14 August 15, 1975, I believe it was.

15 THE COURT: Excuse me. Were you aware of this
16 information before you talked to the
17 Postal Inspector?

18 THE WITNESS: Your Honor, I was aware they were
19 employed at Merchant Diamond Group and
20 that Mr. Doren personally ran it, but
21 as to the assignment of the document
22 I wasn't aware of that.

23 THE COURT: I do not think we ought to hear
24 about that.

25 BY MR. PARRY:

1 Q Now, pursuant to this court authorized wire tap or
2 electronic surveillance that you participated in would
3 it be fare to state that there were in excess of a
4 thousand telephone calls that were intercepted?

5 A Easily.

6 Q Now, have you personally reviewed these telephone calls?

7 A I would say in excess of a thousand of these telephone
8 calls I listened to myself.

9 Q And in regard to these calls that you have listened to
10 have you determined that the, - well, can you tell us
11 whether or not these calls can be categorized as to
12 purpose or subject matter?

13 A Yes. I believe the sales calls could be categorized
14 into three areas and the first of these would be a
15 qualifier call.

16 Q What's a qualifier call?

17 A This was an individual who phoned unsolicited to points
18 in the United States and talked to people there and
19 advised them of the diamond market that did exist; spoke
20 to them about Debeers controlling this diamond market
21 and controlling 85 per cent of the world's diamonds.

22 Q Was any representation made in these qualifier calls
23 about the rate of increase in the value of diamonds on a
24 yearly basis?

25 A Yes. The diamond market was described as being a safer

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1 investment than gold or other commodities over the
2 period of the last 42 years. I have heard various
3 figures quoted from what he referred to as qualifiers.
4 The general level was 22 to 35 per cent annually over
5 the last ten years.

6 MR. RADLER: Your Honor, this is not in the
7 affidavit.

8 MR. PARRY: The misrepresentations that we
9 allege in the affidavit - - -

10 THE COURT: Excuse me, Mr. Parry. You say
11 "misrepresentations". I have heard
12 enough here in this proceeding to, -
13 you see, this is an opinion where he
14 the RCMP' intercepted in excess of a
15 thousand telephone calls whereby sales-
16 men made the following misrepresenta-
17 tions, diamonds being offered to the
18 customer were based on past performance
19 appreciate at the rate of 33 to 60
20 per cent per year. I certainly have
21 confidence in the officer but on the
22 other hand I believe here that the
23 petitioner should have the right to
24 test out the conclusion and therefore
25 it is not going to be enough to listen

1 to the officer's recollection of what
2 is in the tapes. We are going to have
3 the tapes here and we just can not go
4 on and have a general representation
5 made. It will not give counsel an
6 opportunity at all to cross examine.

7 MR. PARRY:

Well, cross examination - - -

8 THE COURT:

Mr. Radler, what is your position
9 here?

10 MR. RADLER:

Well, I think it is manifestly
11 unfair for me to attempt to cross examine
12 some general conclusion of a thousand
13 electronic surveillances, some of which
14 may not even relate to this operation
15 in the United States. I just don't see
16 how I could possibly do it. I agree
17 with your Honor, I suppose is the
18 answer.

19 THE COURT:

We are involved here with United
20 States. Of the calls you listened to
21 how many involved United States and how
22 many involved Canada?

23 THE WITNESS:

Your Honor, virtually all of the
24 qualifier calls involved the United
25 States.

1 THE COURT:

All involved United States. What
2 other kind of categories did you break
3 these calls down into?

4 THE WITNESS:

The second category was that of
5 the opener where the person was called
6 six to eight weeks after he had been
7 sent a brochure as a result of the
8 qualifier call saying the account was
9 opened. The third type of call would
10 be a loader who would call him back
11 and attempt to sell him more. Those
12 were the specific three types.

13 THE COURT:

The qualifier and what you call
14 an opener, and what was the third type?

15 THE WITNESS:

A loader.

16 THE COURT:

To try to sell him more?

17 THE WITNESS:

Yes, your Honor.

18 THE COURT:

Were there calls in which there
19 was some discussion about buying back?

20 THE WITNESS:

Yes. There were calls between
21 clients to Merchant Diamond Group and
22 there were calls between people at
23 Merchant Diamond Group regarding this.

24 THE COURT:

Mr. Parry, it seems to me without
25 making the argument for Mr. Radler that

1 a number of the representations made, -
2 for example, we have the chart of the
3 buy backs in which there was the
4 representation made of the very few
5 number of buy backs and then we have
6 here this information now in which there
7 are buy backs from the records of
8 Merchant Diamond and these are records
9 brought in here by the petitioner. The
10 other thing is that on the chart there
11 over a two or three month period, - it
12 is true that the last witness described
13 this as a most unusual phenomenon in the
14 diamond business but here the increase
15 from the records would indicate that
16 the, - whatever you want to call it, -
17 cost, value, whatever, of diamonds
18 went up some 35 per cent in just a few
19 months and the witness also indicated
20 that the price that the people were
21 selling diamonds for was similar to the
22 price that people would pay for them in
23 the retail market. Evidently he being
24 a person in the business and others in
25 the business did not like the form of

1 merchandising that these people were
2 carrying on. They thought that there
3 was too much pressure to buyer. We
4 have had this business and maybe it is
5 beside the poing as far as the affidavits
6 are concerned but I have not received
7 any notice at all from any purchasers
8 whatever and usually in a case like this
9 if people were really upset about the
10 kind of treatment they were receiving
11 I would have had a flood of letters
12 in here. Mr. Radler, what about this;
13 what do you suggest we do?

14 MR. RADLER:

15 Your Honor, without engaging in
16 extensive argument it has been our
17 position that whether they like the use
18 of the word "investment" this is not a
19 fraudulent scheme. Moreover, - I mean
20 people have bought these at arm's length
21 and those who wanted them back got their
22 money back and I think we have proved
23 with the record and there has been no
24 countervailing testimony to the
25 contrary. I think we have certainly
created a substantial question of fact
on the representations with respect to

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WESTERN DISTRICT OF NEW YORK

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1 appreciation. We have disproved the
2 claims with respect to how many buy
3 backs we acquired. Probably the only
4 failure, I respectfully submit, that
5 we have made is we can not show that
6 Mr. Calderia is a graduate of the
7 Gemological Institute of America. He
8 is our appraiser. I think we have, - I
9 really believe that we have come forward
10 fully with all of our records and all
11 of our proof to disprove the allegations
12 of the affidavit upon which the search
13 warrants were issued and really as a
14 pragmatic matter if they want to indict
15 let them go ahead and indict, let them
16 go ahead and arrest. They don't need
17 our money and our diamonds to indict
18 or arrest. We are here on a very
19 limited issue, namely, give us back our
20 assets and our money pursuant to Rule
21 41(e). It has nothing to do with the
22 merits of the case and any decision in
23 our favor certainly doesn't pass on
24 the guilt or innocence of our client
25 should an indictment or arrest be

1 entered and we simply say the basis
2 presented to your Honor, and this is
3 beside the legal issue of Canadian law
4 with respect to the disclosure which I
5 think, frankly, precludes the issuance
6 of the search warrant because as I
7 understood it the representations were
8 made to the court, I am sure, in good
9 faith at the time that there were no
10 problems with the Canadian law but I
11 think there are problems with the
12 Canadian law based upon the testimony
13 of both Mr. Powell our witness and Mr.
14 Fromken their's. I say we should have
15 our money back, we should have our
16 assets back. If they want to induct
17 us or arrest us let them go ahead and
18 do it. That's another matter in perhaps
19 another court with another day. That's
20 why we're here and, frankly, to bring
21 the Royal Canadian Mounted Police here
22 to testify in a conclusiary fashion
23 without an opportunity in advance for
24 us to look at these tapes I think is
25 manifestly unfair and beyond the scope

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of these hearings, so I am going to
object to any further testimony.

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THE COURT:

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Mr. Parry, certainly when I said
yesterday that we would have to have
disclosure of what was on the tapes I
certainly meant it and I can not recall
the exact language. Maybe I did not say
that you would have to have the tapes
here but it seemed to me from all of the
conversations we have had that that
was clearly implied.

12

MR. RADLER:

13

I think your Honor said it on the
10th.

14

MR. FITZGERALD:

15

16

When the order to show cause was
returnable that Friday morning, Judge,
you said it then.

17

MR. RADLER:

18

I think the record will bear that
out.

19

MR. PARRY:

Whatever the - - -

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THE COURT:

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The thing was that you told us
that these tapes, that the procedures
followed were completely in keeping
with Canadian law. If we were here
and had this been a proceeding here
we would have had the tapes; the FBI

1 would have them right here; we would
2 listen to them right away, could have
3 listened to them some weeks ago.

4 MR. RADLER: And I would have had the
5 opportunity - - -

6 THE COURT: Unless there was some kind of
7 protective order but here these are all
8 kinds of things where there are no
9 secrets. You claim that the employees
10 of these companies talked to customers.
11 There is nothing where you say somebody
12 might be hurt or something like that
13 if you reveal the nature of the calls.

14 MR. PARRY: Well, may I have an opportunity
15 to respond - - -

16 THE COURT: Certainly.

17 MR. PARRY: To everything that has been said
18 to this point?

19 THE COURT: Surely.

20 MR. PARRY: If you go back to the testimony
21 of the last witness Mr. Radler has
22 indicated that we have shown that there
23 is just nothing going on here, it is
24 just a regular retail business.

25 MR. RADLER: I didn't say that.

1 MR. PARRY:

2 The fact of the matter is that the
3 testimony of the last witness as well
4 as the testimony of their own expert
5 confirms the very center of what we
6 maintain is the fraudulent activity
7 here and that is that the public is
8 being told that by purchasing these
9 diamonds at a 300 per cent markup they
10 are investing in a commodity that is
11 going to pay off in handsome dividends
12 and they are being convinced of this,
13 number one, by being told that there
14 is a market exists for these diamonds
15 that does not exist. I think we have
16 established that, and number two, that
17 these diamonds are going up, up, up
18 from the price at which they had paid,
19 when in fact these people have gone way
20 over any point at which the appreciation
21 could even give them back their purchase
22 price except for maybe twenty years
23 down the road. Now, that is not an
24 investment and the representation to
25 the public that it is a good investment
and that they are going to make this

1 kind of appreciation is false and that
2 is the heart of the affidavit and having
3 established that fraud I think we have
4 met the burden.

5 THE COURT: Mr. Radler.

6 MR. RADLER: There has been no showing that
7 there has been a two to three hundred
8 per cent markup, none at all. No proof
9 has been introduced to that.

10 MR. PARRY: That's what this witness - - -

11 MR. RADLER: Please.

12 THE COURT: Mr. Parry, I am not going to accept
13 the word of this witness without
14 opportunity to cross examine.

15 MR. PARRY: Well, I think Mr. - - -

16 THE COURT: That is what any litigant is
17 entitled to do.

18 MR. PARRY: I think Mr. Radler can cross examine
19 this witness better than he can cross
20 examine a tape recorder.

21 MR. RADLER: Well, I - - -

22 THE COURT: Mr. Parry, do not make silly
23 statements like that.

24 MR. PARRY: Well, Judge, everybody is saying
25 he should have an opportunity to cross

1 examine.

2 THE COURT:

3 I told you in the beginning. You
4 told me we would have the tapes available
5 when you represented to me when I signed
6 this form, you would have it available.
7 You are absolutely asking me to make a
8 decision in the dark and I will not do
9 it. I made a bad mistake in this case
10 and furthermore, what is fraud. We
11 have a system where a seller goes out
12 in the market whether he is operating
13 a fruit stand or if he is selling
14 diamonds. He has the right to advertise
15 and to say, "ladies and gentlemen, these
16 are the best tomatoes and the best
17 peaches you will ever get. You can't
18 get any better and if you take them home
19 and put them in your freezer overnight
20 they will be worth two or three times
21 in value the next day". You may say
22 that anybody who would buy that sales
23 talk is stupid, but the point is in our
24 society if a person has the funds, if
25 he has the money he has the right to be
stupid and if he wants to invest his

1 money in a schemelike this then perhaps
2 he should have the right to do it and
3 that is what it comes to. We are not
4 a society where our hands are held night
5 and day and uncle government is going
6 to say, "yes, you can invest in savings
7 bonds but you can't invest in gold
8 bullion", or strike "gold" out because
9 we have had that out before, or diamonds
10 or in expensive automobiles and one of
11 the big points you made to me, it seems
12 to me, in the beginning was the represen-
13 tation about people were told they could
14 buy the diamonds back and then they were
15 not because the just wouldn't buy them
16 back. Here we have undisputed evidence
17 that they were bought back. Here we
18 have unrebutted the fact that over a
19 period of time that these diamonds did, -
20 a phenomenon, but did increass in value.
21 Maybe a small number only but it is
22 unrebutted. All I am saying is that as
23 far as what was said on the tapes that I
24 want to hear what was said on the tapes
25 and I want to hear it now. What is the

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WESTERN DISTRICT OF NEW YORK

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MR. PARRY:

position? Is the position that you can not produce the tapes here in this court?

The position is that I have been told that the tapes are unavailable for production in this court.

MR. RADLER:

If your Honor please, I maintain respectfully that they have known that from the inception and that's why we made our motion. I say as I did on June 10th or whatever it is it is really easy now for the Government because they don't have to indict us, they don't have to arrest us. All they got to do is tell your Honor that they have got tapes which they can't produce and your Honor will order that our assets be seized so we can't engage in the business whether it is legal or illegal and that's what happened. We're out of business and we are entitled to our money back.

MR. PARRY:

Your Honor, just to set the record straight it is my understanding, - I wasn't here on the 10th, - it was my understanding from our discussion

1 yesterday that the production of a member
2 of the RCMP to answer those questions
3 that Postal Inspector Snyder could not
4 answer was what the Court was looking
5 for. That's what I discussed with the
6 Crown Attorney. Now I find out that
7 you want to hear the tapes. To tell
8 you the truth, I really have not gotten
9 a definitive answer from the Crown
10 Attorney on the tapes. At this point
11 I didn't even inquire about it.

12 THE COURT:

13 We have waited long enough. We
14 will do this; we will reconvene at 2:00
15 tomorrow afternoon and at that time you
16 are to have the tapes. If you do not
17 have the tapes here then I am going to
18 sign an order lifting the restriction
19 on the bank account and also granting
20 an order under Rule 41 returning the
21 property to you. It seems to me that,
22 Mr. Radler and Mr. Fitzgerald, we
23 probably should have some findings of
24 fact here as to what the hearing dis-
25 closed and so that I believe it would
be important that at that time, at 2:00

1 tomorrow afternoon you have proposed
2 findings of fact.

3 MR. RADLER: Yes, your Honor, we will.

4 THE COURT: Mr. Parry, I am going to give you
5 another opportunity and I do it really
6 sort of reluctant because it seems to
7 me that it was absolutely clear what I
8 had directed before. 2:00 tomorrow
9 afternoon, tapes here with the under-
10 standing that Mr. Radler and Mr.
11 Fitzgerald will have the opportunity
12 to listen to all the tapes.

13 MR. PARRY: Well, your Honor, as long as I
14 have Corporal Rowland here - - -

15 THE COURT: He can come back tomorrow after-
16 noon at 2:00 o'clock.

17 MR. PARRY: If at that time, - I am thinking
18 now in terms of completing my record
19 for what is going to have to be an
20 appeal, if he is here and we don't have
21 the tapes can I complete my record by
22 taking his testimony?

23 THE COURT: Are there other questions that
24 you want to put to him?

25 MR. PARRY: Well, I want to go through the

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misrepresentations contained in the affidavit and what his knowledge of the tapes indicates concerning those misrepresentations.

MR. RADLER:

I would object to that. I can't cross examine him without these tapes.

THE COURT:

I will sustain the objection. I am not going to listen to what his recollection is at this stage of the proceedings of what was on the tape and you have the tapes here.

MR. PARRY:

Now, your Honor, also in regard to that if the tapes are not here will it be necessary for Corporal Rowland to be here?

THE COURT:

I do not think it will be necessary for the Corporal to be here if you can not get the tapes.

MR. PARRY:

I just want to get it clear.

MR. RADLER:

Might I ask - - -

THE COURT:

Because I think then the evidence will be closed.

MR. RADLER:

Might I ask Mr. Parry if in fact he finds out during the morning prior to our hearing in the first instance

1 either that the tapes are going to be
2 here I would be glad in order to save
3 time start listening to them. We will
4 not be holding the Court up. That is
5 the first thing, or if they are not
6 going to be here I would also like to
7 know that so that I can conclude
8 our - - -

9 THE COURT:

I think that is fair. It seems
10 to me it would be best for all concerned
11 if as soon as you can in the morning
12 find out what will occur you let Mr.
13 Radler know.

14 MR. PARRY:

Judge, also in anticipation of what
15 I believe is going to be the situation, -
16 that is that the tapes won't be avail-
17 able, I would like to make an applica-
18 tion tomorrow, - before you enter an
19 order I would like to make an applica-
20 tion for a particularized form of
21 relief in the matter in that we believe
22 that we are holding money, - I think
23 they have already conceded that at least
24 \$145,000 of that money belongs to other
25 people.

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1 THE COURT: Have any lawsuits been started?
2 MR. RADLER: No.
3 MR. PARRY: No, but I have received many
4 complaints. I know your Honor has not
5 received any complaints but I have.
6 THE COURT: Everyone is entitled to safeguard
7 his own interest or not as he sees fit
8 and I will grant an order in such a
9 fashion that there will be a very brief
10 stay so that if you desire you may apply
11 for a further stay from the Appellate
12 Court but I think it must be extremely
13 brief so that it will be over the week-
14 end at the greatest. I think all I can
15 do is give you five days anyway.
16 MR. PARRY: If you could give us five days
17 that's all we will require.
18 THE COURT: I am not saying I will. It may
19 be Monday or Tuesday, but you tell, and
20 it seems to me that I will be ready to
21 make findings tomorrow afternoon and it
22 will be most helpful to me if you will
23 have ready proposed findings.
24 MR. RADLER: We will, your Honor.
25 THE COURT: Very well.

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1 MR. RADLER:

All right, Sir.

2 THE COURT:

We will be in recess then until

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2:00 o'clock tomorrow.

4 MR. RADLER:

Thank you, your Honor.

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(Recess taken at 4:22 P.M.)

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1 PROCEEDINGS:

June 23, 1977, 2:04 P.M.

2 APPEARANCES:

As before noted.

3
4 THE COURT:

We are here in Merchant Diamond
Group, Mr. Parry.

5
6 MR. PARRY:

Yes, sir. I have conferred with
the Crown Attorney in Toronto and I
have been advised that the tapes will
not be available to us. I believe that
was the information that you were looking
for yesterday.

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12 THE COURT:

Mr. Parry, so we have a clear
reading here, is the answer that they
will not be available to you at any
time or that they can not be made
available now?

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17 MR. PARRY:

They can not be made available now.
I didn't explore the time limit that
they were talking about but it is my
understanding from their procedures up
there that they are going to have a
preliminary hearing in October and that's
when the tapes, I guess, could be made
public so given the amount of time in-
volved I really didn't make any further

1 inquiry of them.

2 THE COURT:

3 In a matter that Judge Elfvin had
4 and there were a number of steps involved
5 and I understood that this was about
6 the first time that an application was
7 made, the application before Judge
8 Elfvin, and it took about a year to get
9 the matter resolved. At best one of
10 the Judge's law clerks who I just talked
11 to informally about it, at best now that

12 we have run through the procedure
13 one time it still taken three or four
14 months because of all the steps that had
15 to be followed. The Attorney General
16 here has to make application here; the
17 Crown would hire private counsel which
18 they did with Mr. Powell there and
19 application has to be made to the court
20 in Canada after the it was signed here
21 and then the material would have to be
22 examined and packaged up or whatever
23 they do with it, so even in the best of
24 circumstances it would take a little
25 while. I thought it might be good to
know just exactly whether the position

1 here was that it would not be made
2 available at all or whether it just
3 can not be made available at this time
4 and that I understand is the answer.

5 MR. PARRY:

Yes, sir. It is just that they
6 can't be made available at this time.

7 THE COURT:

On the motion here for the return
8 of property pursuant to 41(e) you know
9 my mind which I expressed yesterday.
10 Do you have anything which you want to
11 call to my attention before we go ahead
12 and make a decision on this?

13 MR. PARRY:

Yes, sir. We prepared a statement.
14 I am having it typed now. I didn't
15 realize until shortly before 1 o'clock
16 that you would accept any additional
17 case law or written matter from us. We
18 dictated something - - -

19 THE COURT:

I am always open for instruction.

20 MR. PARRY:

Well, I do have a statement and
21 some case law contained in the statement
22 being typed and I will endeavor to have
23 it here probably within the hour if I
24 can submit it to you then. One portion
25 of the request that we would submit,

1 Judge, is, - well, let me put it into
2 context. What we are talking about here
3 is some of the money which we now have
4 in our possession or at least it has
5 been frozen pursuant to court order and
6 we would urge the Court to take into
7 account the fact that certain of the
8 participants in this corporation have
9 been convicted of fraud; the fact that
10 charges, - fraud charges have been layed
11 in Canada against some of the principals
12 of this corporation and that we feel
13 that the evidence to the extent that we
14 could present the evidence shows that
15 one major element of the fraud as out-
16 lined in the affidavit we could establish.
17 That is the key to the whole fraud scheme
18 as we allege it and that is the propo-
19 sition of the availability of a market,
20 a retail market existing in which these
21 diamonds could be sold and having made
22 that presentation we would urge the Court
23 to take steps to protect what we believe
24 to be three potential classes of
25 creditors and that would be, first of

1 all, individuals who have sent their
2 money to receive their diamonds and
3 in fact did not receive their diamonds.
4 This would be as a result of the searches
5 that were conducted here and in Canada
6 which in effect stopped the business of
7 the Merchant Diamond Group. I believe
8 that Mr. Radler has indicated their
9 figures show about \$145,000 in one of
10 these accounts is money that would fit
11 into that category. We haven't been
12 able really to confirm that figure so
13 far. There is another potential class
14 of creditors, - we don't know how many
15 people fall into this category, but
16 these are individuals who returned
17 their diamonds so that they could be
18 paid for them and again I think there
19 might be some who fall into that cate-
20 gory where they have returned their
21 diamonds and the search occurred and
22 they never received their money, and
23 then there is a third category that we
24 would urge will come into being and
25 that is the individuals who paid their

1 money and received their diamonds thinking
2 that they were purchasing something that
3 has far more value than it actually does
4 have and we would anticipate once the
5 Canadian prosecution gets underway more
6 and more of these people are going to
7 come forward.

8 I know your Honor indicated yester-
9 day that you had not received any
10 complaints. We have in our office and
11 I know that the RCMP has received many
12 complaints in their office and taking
13 all of that into light we would urge
14 the Court to make some provision to
15 protect the interests of these three
16 classes of creditors whether that would
17 be by way of turning the money over to
18 a receiver un til whatever classes of
19 creditors the Court deems should be paid
20 off or whatever, we would just urge you
21 to dispose of the money in such a way
22 that would protect their interest.

23 THE COURT:

24 Have you any authority, any section
25 or statute you can refer to me that I
have absolutely any authority to do any

1 of the things that you suggest?

2 MR. PARRY: I don't have it now, Judge, but if
3 I could have a couple more hours I
4 would sure like to give it a try to find
5 it. We are concerned about - - -

6 THE COURT: We have been at this matter since
7 the middle of April. Mr. Radler, do
8 you have any suggestion?

9 MR. RADLER: Yes, your Honor. In the first
10 instance with respect to briefs as your
11 Honor knows we have submitted proposed
12 findings of fact and a proposed order.
13 We did not prepare briefs because I was
14 not aware that your Honor was going to
15 receive additional law. I really don't
16 want to get into a protracted exchange
17 of briefs and I think we will stand on
18 the facts.

19 THE COURT: We will not do that.

20 MR. RADLER: With respect - - -

21 THE COURT: As a practical level on the three
22 categories as to those folks who sent
23 their money in in the hope of getting
24 diamonds as I have already explained to
25 you it seems to me that on the evidence

1 that I have heard in this court, and
2 that is all I can go ahead on, that
3 I have found that there were, - and I
4 am not blaming Mr. Snyder because I
5 think that some of the information given
6 to him it appears from what we have
7 heard from Mr. Arend and from the
8 analysis made which Mr. Arend disagrees
9 with of sales that there were some
10 inaccuracies in his affidavit based
11 on the information that he received
12 from the RCMP.

13 Since we do not have the tapes we
14 have no way of knowing what was said
15 therefore it appears to me clearly that
16 the petitioner here is entitled to
17 relief. As far as the practical problem
18 of, let us say we have categories,
19 safeguarding individuals who have, for
20 example, sent their money in for
21 Diamonds and diamonds as I understood
22 were either here to be mailed to them
23 or were in the process of being trans-
24 mitted from Toronto to Buffalo to be
25 mailed to them, those people are entitled

either to get their money back or get

1 their diamonds, one or the other. I
2 think that some means ought to be worked
3 out so that can be done but that is not
4 part of the criminal process and the
5 practicalities of the situation are that
6 unless you can call my attention to
7 some statute under the circumstances I
8 do not think I have any jurisdiction
9 whatever to name a receiver.

10 I think that civil action could be
11 instituted by someone so that if neces-
12 sary a receiver could be named. It
13 seems to me usually when we think of a
14 receiver we think of the Bankruptcy
15 Judge but nobody claims there is any
16 insolvency here. It is the other way
17 around.

18 MR. RADLER:

To the contrary, your Honor.

19 THE COURT:

20 The other category, those folks
21 who have sent their diamond in with the
22 understanding that there would be a buy
23 back, again it seems to me that some
24 way where they have an agreement there
25 would be a buy back that in some way
somebody ought to be able to remit the

1 funds to them so that they get their
2 money back for the diamond they sent
3 in.

4 As to the other group of people
5 who have made a judgment that they wanted
6 to buy a diamond under these circum-
7 stances, I suppose that breaks down into
8 two categories. One group those
9 individuals who still would like to
10 get their diamond because they think
11 that perhaps this is a good buy and
12 they want to get their diamond. As
13 to those individuals again it would seem
14 to me if that is the case that somebody
15 ought to send their diamond to them.

16 On the other end of the scale there
17 may be some people that have some doubts
18 about buying the diamond and, frankly,
19 under the facts as I know them I do not
20 know what to do in that situation because
21 they have entered into an agreement,
22 an agreement as far as the facts that
23 I have before me I must perforce say to
24 you that I do not find sufficient fraud
25 to keep the property and therefore I

1 can not see how I can make any judge-
2 ment one way or another about whether
3 or not these people should get money or
4 diamond and it is sort of beside the
5 point because I just do not have any
6 jurisdiction to rule on those situations.

7 Mr. Radler, perhaps on a practical
8 level you may have some suggestion.

9 MR. RADLER:

10 Well, I think I tried to explain
11 when we introduced the testimony relative
12 to, I think, \$145,000 worth of funds
13 which related to people who had, - who
14 might be entitled to those funds because
15 they had returned the diamonds. I was
16 doing that in order to deal with the
17 problem which I think is before the
18 Court now, how if it is appropriate do
19 you frame relief here. In the first
20 instance, I don't, - I respectfully
21 submit that the Federal Court is not a
22 collection agency for anybody and I know
23 of no authority either statutorily or
24 casewise, and we have looked at it,
25 that would permit this court in this
circumstance to appoint a receiver or

1 to do anything else that would safe-
2 guard the funds. With respect to
3 everything certainly other than the
4 \$145,000 the Government has had the
5 records for months. It seems to me that
6 they were bound to come forward if they
7 are now making the kind of application
8 that apparently they are making and
9 disprove what we proved and there was
10 no countervailing testimony to our very
11 clear testimony by the office manager,
12 and we gave them all of the records and
13 they have had the records, I believe,
14 since April as well as the records that
15 we introduced for some period of time
16 here in June. There was no testimony
17 whatsoever that anything we said with
18 respect to our customer relations was
19 anything other than the fact and I
20 respectfully submit that we are entitled
21 to all of our money and that there are
22 appropriate civil proceedings for any-
23 one who feels they have been damaged
24 to bring.

25 Secondarily I just feel compelled

1 to respond if I may to the extra record
2 comment of Mr. Parry which I accept at
3 face value that they have received
4 complaints. I would respectfully sub-
5 mit that the complaints have their
6 genesis in the investigation and prose-
7 cution which has commenced and I know
8 of no complaints by anybody prior to
9 the time that the newspaper publicity
10 with respect to the problem arose and
11 I just think it is manifestly unfair to
12 suggest to the Court that they have got
13 a slew of complaints when I suggest
14 that they post-date the investigation
15 and the publicity.

16 I feel we are entitled under Rule
17 41(e) to our property, both our cash
18 and our diamonds and if somebody is
19 dissatisfied they can sue us. I would
20 represent to the Court, as a matter of
21 fact, that of the funds, and we were
22 really trying to bend over backwards so
23 that there would be no dispute over what
24 we would be entitled to. Of the funds
25 that we identified I will warrant to the

1 Court there a number of people who want
2 their diamonds, they are satisfied with
3 them. I think that's a civil problem
4 to be handled by the civil litigants or
5 the potential litigants and that's
6 really our position. We haven't briefed
7 it and I am sorry. I didn't know you
8 want that.

9 THE COURT:

With no authority from the Govern-
ment for me to act I see no jurisdiction
except for me to grant an order pursuant
to Rule 41(e). Practically, are there
individuals in the corporation who are
able to act now in New York State? In
other words, is there an officer or
someone else - - -

17 MR. RADLER:

The officers of the corporation
are all, of course, Canadian.

19 THE COURT:

Canadian.

20 MR. RADLER:

21 Canadians and they are not here
22 for reasons which I think are obvious
23 to the Court. I don't want to represent
24 what we will do but if there is some
25 question of trust funds or escrow accounts
or taking the diamonds we will act as

1 officers of the court with respect to
2 the appropriate disbursement back to
3 Merchant Diamond Group, Inc. of the funds and I
4 think we can handle it that way. As a
5 practical matter what I think should be
6 done, the bank accounts have been frozen
7 and we have submitted a proposed order
8 which unfreezes the accounts and I think
9 that we should be permitted to wire those
10 funds to Canada so that there is no
11 problem with respect to documents which
12 can be transferred in any fashion. The
13 diamonds - - -

14 THE COURT:

It will cost you a lot of money.

15 MR. RADLER:

16 But I don't think they should be
17 put into negotiable instruments. I
18 don't want to do that. I think they
19 should be wired whether it costs \$5,000
20 or whatever to the account of the parent
21 corporation in Canada and we will take
United - - -

22 THE COURT:

23 Can not you do that by a simple
check? Why wire it?

24 MR. RADLER:

25 I don't know. To be honest with
you I don't know what to do.

1 THE COURT:

That is not my concern.

2 MR. RADLER:

No, it is not your concern. I
3 think if the accounts are unfrozen we
4 can handle it.

5 THE COURT:

All right. Let us do this; I think
6 that the order should issue right away.
7 Mr. Parry, I will stay the execution
8 of that order until, - today is Thursday
9 the 23rd. I will stay the execution of
10 the order until Tuesday, the 28th. I
11 will sign the order this afternoon with
12 the stay. I will not grant further
13 stay. I do not believe I have the
14 authority to grant a further stay. Do
15 not apply to me for a further stay and
16 I know you will not go to another
17 District Court here because they will
18 not, certainly, listen to your applica-
19 tion. If you believe that you have a
20 matter which is appealable certainly
21 you can go immediately to the Second
22 Circuit but your application must be
23 made immediately. If you want a further
24 stay of my order your application must
25 be made to the Second Circuit for a stay.

H. T. Noel & E. F. Knisley

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1 Also what I will do is I am prepar-
2 ing findings of fact and I will file a
3 memorandum either tomorrow or Monday
4 on my findings of fact, conclusions of
5 law, my written decision and order.
6 The decision shall be made part of the
7 record on any appeal so that the
8 appellate court will have my decision,
9 will have my written findings in their
10 review of any proceedings that you care
11 to take.

12 MR. RADLER:

13 Your Honor, in anticipation of
14 this we have looked at Rule 8 of the
15 Appellate Rules and I would only request
16 that in the event Mr. Parry deems that
17 he has an appealable order which,
18 incidentally, I do not believe he does
19 but that is a matter for argument before
20 the Second Circuit, I would request that
21 he give us notice of any application
22 that he makes to the Second Circuit.
23 I am particularly concerned because
24 again I don't attribute any ill motives
25 to anybody but we have not been re-
ceiving notice of a lot of things.

1 THE COURT:

You are directed, certainly, Mr. Parry, to deliver to Mr. Radler any application you make to the Second Circuit and to advise him of any arrangement you have of meetings there.

6 MR. RADLER:

There is a single judge provision which is what I am concerned about, if Mr. Parry intends to go either before a single judge or a panel for a stay I would like to be advised of it.

11 THE COURT:

If you go to Judge VanGraaflin - - -

12 MR. RADLER:

Right.

13 THE COURT:

In Rochester you must give Mr. Radler notice.

15 MR. RADLER:

That's my only request, Sir.

16 THE COURT:

May I look at this a minute.

17 MR. RADLER:

It says in Rule 8 - - -

18 THE COURT:

It appears, - it says in Rule 8 I should make findings. I will in my memo. I will state them briefly now, that it seems to me clearly this matter has been pending since April 14; I find now that the affidavits presented when analyzed after evidence do not support the warrant issued and therefore the

1 relief should be granted. I believe
2 that there are two concepts here. One
3 is that my decision, certainly if the
4 Second Circuit finds it to be an appealable
5 order that they certainly should have
6 time to consider it. You should have
7 time to go there. I think that since
8 it is now Thursday that you have more
9 than adequate time to do it by Tuesday.
10 The Appellate Court, of course, may
11 decide to take it on immediately or may
12 stay it until they have further informa-
13 tion.

14 On the otherhand, as far as the
15 petitioner on this, since we have waited
16 since April, - it is now over two months,
17 that as far as analyzing the information
18 received and when you consider the
19 impact upon the business of the
20 petitioner that no further delay by
21 this Court should be given for the
22 Government to make a case.

23 Do you have Rule 27, Mr. Fitzgerald?

24 MR. FITZGERALD:

25 Yes, Judge. I am sorry. It is
in the back of that volume.

1 MR. RADLER: I will let my lawyer help me.

2 MR. FITZGERALD: Here it is, Second Circuit - - -

3 THE COURT: What is it?

4 MR. FITZGERALD: Judge, Rule 27(g) is entitled

5 "Other Motions" and it is a Second

6 Circuit, I guess, in-house rule and

7 that's what I was talking about.

8 THE COURT: All right.

9 MR. FITZGERALD: And it is kind of a general provi-

10 sion that allows for scheduling for

11 unusual type motions.

12 MR. RADLER: I am not sure that really that's

13 applicable. That would have to do at

14 this point, I think, with our concern

15 that a stay is obtained by Mr. Parry

16 and if the court deems it appealable I

17 would certainly want it expedited, any

18 appeal, and that would be my problem

19 but I think it is Rule 8 of the Appellate

20 Rules that governs that requires reason-

21 able notice to all parties. I would

22 hate to have a stay granted without an

23 opportunity to argue against the stay.

24 27(g), I think, is something further

25 downstream.

1 THE COURT: Naturally, it may be that something
2 may occur that they may not be able to
3 hear you on that day and you desire to
4 have this extended by agreement that is
5 up to you but I think that this is as
6 much time as I should grant under the
7 circumstance.

8 MR. FITZGERALD: Judge, can we just have a minute
9 to get something clear between ourselves?

10 THE COURT: Yes.

11 MR. RADLER: Excuse me, your Honor. I think
12 maybe your Honor has this in mind but
13 again so that we are clear the relief
14 that we request, of course, applies not
15 only to the bank accounts and to the
16 diamonds but to whatever property has
17 been seized by way of documents and other
18 material.

19 THE COURT: We have the bank accounts, the
20 diamonds seized pursuant to the search
21 warrant.

22 MR. RADLER: Yes, sir.

23 THE COURT: The diamonds seized by the Postal
24 Inspector which were in the process of
25 mail.

1 MR. RADLER: Right.

2 THE COURT: And the books and records.

3 MR. RADLER: The books and records, that's what
4 we are talking about.

5 THE COURT: Everything shall be returned.

6 MR. RADLER: All right. Thank you, your Honor.

7 THE COURT: It may be necessary, Mr. Radler,
8 to get some implementing orders. In
9 other words, to notify the banks.

10 MR. RADLER: Yes, sir.

11 THE COURT: And so forth. They may say, "we
12 want the order to read thus and so".

13 MR. RADLER: I know that.

14 THE COURT: If that is the case you just come
15 to me with the application and you talk
16 to Parry about your order.

17 MR. RADLER: I will clear it in advance with
18 Mr. Parry and I take it your Honor will
19 issue your own order and your own
20 findings tomorrow or Monday, was that it?

21 THE COURT: Yes.

22 MR. RADLER: Okay, fine.

23 THE COURT: Mr. Fitzgerald, why not return
24 late in the afternoon and, Mr. Parry,
25 you come back and I will have a brief

1 order at that time which will set this
2 thing in motion.

3 MR. RADLER: You don't require anything further
4 from us in the way of papers?

5 THE COURT: No.

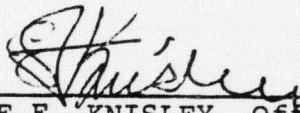
6 MR. RADLER: Thank you, your Honor.

7 THE COURT: All right.

8
9 (Proceedings concluded at 2:30 P.M.)

10
11 * * * * *

12
13 I certify that the foregoing is a complete
14 and accurate transcription of my shorthand
15 notes taken herein.

16 
17 E.F. KNISLEY, Official Reporter,
18 USDC, WDNY.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

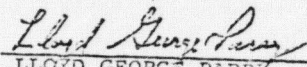
v. :

Misc. Crim. No. 214

THE MERCHANT DIAMOND GROUP, INC. :

NOTICE OF APPEAL

Notice is hereby given that the United States of America hereby appeals to the United States Court of Appeals for the Second Circuit from the order returning seized property and releasing funds to the defendant entered in this action on June 23, 1977.



LLOYD GEORGE PARRY
Department of Justice Attorney
921 Genesee Building
Buffalo, New York

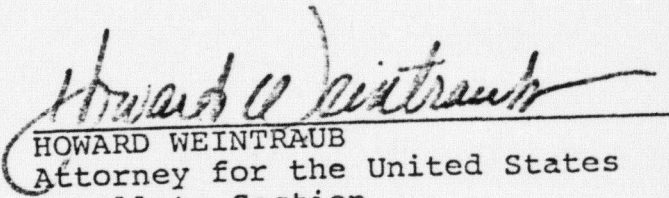
DATED: June 24, 1977

AT: Buffalo, New York

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of September 1977, a copy of the foregoing Brief and Appendix were served by mail on the following:

Warren S. Radler, Esquire
Saperston, Day & Radler
Liberty Bank Building
Buffalo, New York 14202


HOWARD WEINTRAUB
Attorney for the United States
Appellate Section
Criminal Division
Department of Justice
Washington, D.C. 20530